Substitution under the Canadian Environmental Assessment Act

A Report on the Evaluation of the Substitution of the National Energy Board Review Process for a Canadian Environmental Assessment Act Review Panel for the Emera Brunswick Pipeline Project

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Executive Summary

In November 2006, National Energy Board (NEB or the Board) hearings were substituted for a review panel in the environmental assessment of the Emera Brunswick Pipeline Project in New Brunswick. The NEB Review Panel Report was approved by the Governor in Council in May 2007 and the project was approved by the relevant regulatory authorities.

The substitution of process, in this instance, was done on a pilot basis and has been evaluated in order to inform ongoing consideration of policy and operational issues associated with the substitution of a process for an environmental assessment by a review panel under the *Canadian Environmental Assessment Act* (CEA Act). In carrying out the evaluation, the Canadian Environmental Assessment Agency (the Agency or CEAA) has sought to determine, based on the results of the evaluation, how the substituted process specifically differed from the typical panel review, what worked well, and what would need to be considered before exercising the CEA Act's substitution provisions on another project.

The pilot was determined to be, in general, successful and provides a good illustration of what substitution as a tool may accomplish. Overall, the principal expectations of the parties to the pilot substituted process were realized, although some insufficiencies were noted, particularly with respect to informal opportunities for public participation. As well, the lack of direct involvement of the Minister of the Environment in the selection of panel members and in the establishment of the panel's terms of reference created among some participants a perception of bias toward energy development and trade.

This report provides valuable information on the initial use of the substitution provisions. The next step for the Minister of the Environment and the Agency is to discuss the findings in this report with the federal environmental assessment community and consider its implications on the future use of the substitution provisions of the CEA Act.

1. Introduction

1.1 Background

In March 2006, the NEB, in consultation with Fisheries and Oceans Canada (DFO) and Transport Canada (TC), requested that the Minister of the Environment (the Minister) refer the assessment of the proposed construction and operation of a 145-kilometer pipeline between the Canaport Liquefied Natural Gas Facility at Mispec Point in Saint John, New Brunswick to the international border near Saint Stephen, New Brunswick (the project) to a review panel pursuant to section 25 of the *Canadian Environmental Assessment Act* (CEA Act). The NEB further requested that the review panel process be conducted by the NEB under section 43 of the CEA Act – the substitution provision.

In May 2006, the Minister of the Environment wrote to the Chairman of the NEB approving the request for substitution, subject to a number of conditions which outlined how the substituted process would need to be conducted to meet the requirements of the CEA Act (outlined on page 20 of this report). The Chairman of the NEB committed to conduct the NEB public hearing process in such a way as to meet the Minister's conditions.

The NEB held public hearings on the project from November 6 to 20, 2006 and the NEB Review Panel issued its report on April 11, 2007. The federal government's response to the NEB Review Panel Report was approved by the Governor in Council (GIC) in May 2007. The federal responsible authorities (the RAs – NEB, DFO, TC, and the Canadian Transportation Agency and Environment Canada who were identified as RAs later in the process) then determined that they could exercise their powers with respect to the project. These included permits and authorizations under *the National Energy Board Act, the Canada Transportation Act, the Canadian Environmental Protection Act, 1999, the Fisheries Act* and *the Navigable Waters Protection Act.*

The substitution of the NEB review process for an environmental assessment by a review panel under the CEA Act in relation to this project (the substituted process) was the first use of the CEA Act's substitution provisions and was undertaken on a pilot basis.

The evaluation focused on the identification of facts associated with the substituted process, and not on the outcomes of the NEB review of the project.

1.2 Objectives

The objective of the evaluation was to examine, in a fact-based manner, the substitution that took place in relation to the project. The results of this examination will contribute to policy and operational considerations with regard to the application of substitution provisions by the Minister of the Environment. To this end the evaluation examined:

a. Whether, and if so how, the conditions for substitution were met?

b. What were the principal expectations of the substitution process? Were these expectations realized? If so, what key factors contributed to this success? If not, what key factors contributed to the situation?
c. What additional process considerations can be identified based on the experiences of participants in the substituted process?

1.3 Conduct of the Evaluation

The evaluation was conducted by the Agency and includes a general account of the pilot substituted process. The latter was developed with the cooperation of the NEB, through a fact-finding review of NEB proceedings. The review examined public documents related to the substituted process, as well as other NEB documents related to the project and NEB procedures.

The evaluation also focused on assessing and reporting on whether the expectations of the parties involved in the substituted process were met. The expectations of the NEB and the Agency were outlined in advance of the process. In the case of the NEB, a discussion paper on substitution of NEB hearings for panel reviews under the CEA Act was written; and, with respect to the Agency, a letter from the President of the Agency was sent to the Chairman of the NEB outlining the conditions for the substituted process.

The evaluation also included a survey of parties who participated in the substitution. The surveyed parties consisted of participants, such as public stakeholders and Aboriginal parties, among others, who either made oral statements, submitted written comments or acted as intervenors in the public hearing. The results of these interviews have been used to supplement the fact-finding information.

A third party external contractor was hired to conduct structured interviews using questions developed in consultation with the Agency. The results of the survey were analysed by the Agency.

The interviews explored such matters as: whether interested parties had access to the appropriate information to help them to understand the project and its potential impacts; whether in their view there was an opportunity for meaningful participation in the process; whether the means and requirements of participation were clear and understood; and whether they believe that the issues of concern to them were well considered as part of the process.

A survey of federal government environmental assessment and regulatory authorities was also undertaken. The purpose of this element was to determine facts associated with the participation of federal authorities in the substituted process, as well as the views of the implicated departments on the effectiveness of the substituted process.

Where appropriate, comparisons are made to the processes of other comprehensive studies, panel reviews, and joint review panel assessments.

2. Context

2.1 *The Canadian Environmental Assessment Act*

The *Canadian Environmental Assessment Act* (*CEA Act*) requires a federal authority (such as a Cabinet Minister, a federal department or agency, or a parent federal Crown Corporation) to ensure the conduct of an environmental assessment of a project under circumstances where a federal authority exercises a power or performs a duty or function as follows:

- When the federal authority is the proponent of the project.
- When the federal authority provides certain forms of financial assistance to the proponent, for the purpose of enabling the project to be carried out in whole or in part.
- When the federal authority sells, leases or otherwise disposes of federal lands or interests in them, or transfers control of those lands or interests to a province, for the purpose of enabling the project to be carried out in whole or in part.
- When the federal authority issues certain permits or licenses or grants certain approvals for the purpose of enabling the project to be carried out in whole or in part.

A federal authority that exercises any power or performs any duty or function as set out above is known under the CEA Act as the responsible authority.

The CEA Act provides for four types of environmental assessment processes: screening (including class screening), comprehensive study, mediation, and panel review. Assessments typically commence as screenings, or where set out in regulation, a comprehensive study. If at any time the Minister of the Environment is of the opinion that the project may cause significant adverse environmental effects, or public concern warrants, the Minister may choose to refer the assessment to a review panel for examination.

Under the CEA Act, only the Minister of the Environment may order an assessment by a review panel. The CEA Act provides a number of mechanisms by which a project may be referred to the Minister for a review panel. The two most commonly used mechanisms, track decision and referral to Minister, occur based on section 21.1 and section 25 of the CEA Act, and are described below.

2.1.1 Track Decision

Section 21 requires responsible authorities undertaking a comprehensive study to provide the Minister of the Environment with a report regarding the scope of the project, factors to be considered, public concerns, and the potential of the project to cause adverse environmental effects. The report also provides an assessment of the ability of a comprehensive study process to address issues relating to the project, and a recommendation to the Minister as to whether the assessment should continue as a comprehensive study, or if it should be referred to a review panel. Under Section 21.1,

the Minister, using the track decision mechanism, can decide whether the assessment should continue as a comprehensive study, or if it should be referred to a review panel .

2.1.2 Referral to Minister

Section 25 of the CEA Act allows responsible authorities to request that the Minister of the Environment refer projects to review panel where they are of the opinion that the project may cause significant adverse environmental effects, or public concern warrants assessment by a review panel. This request can be made at any time during the assessment, and does not require preparation of a specific report, such as is the case for referrals with the track decision mechanism under section 21.1. Moreover, the use of section 25 to request the referral of an assessment to a review panel could be applied to a screening type assessment, whereas the track decision mechanism is only used for comprehensive studies.

2.1.3 Panel Composition and Procedures

A panel review is conducted by a group of experts who are selected on the basis of their knowledge and expertise, and appointed by the Minister of the Environment. The Minister also appoints one of the panel members as chairperson. The review panel must ensure that the information required for the assessment is obtained and made available to the public. Their role is to review and assess, in an impartial and objective manner, a project with likely significant adverse environmental effects or public concern.

The panel is required to hold hearings in a manner that offers the public an opportunity to participate in the assessment. It must also prepare a report setting out the rationale, conclusions and recommendations of the panel relating to the environmental assessment of the project, including any mitigation measures and follow-up programs, and a summary of any comments received from the public.

The review panel must then submit the report to the Minister and the responsible authority. The responsible authority must respond to the report with the approval of the Governor in Council (GIC). After taking into consideration the report submitted by the review panel, the responsible authority takes a course of action based on the panel's recommendations and in conformity with the approval of the Governor in Council, on whether to exercise, or not, a power or perform a duty or function that would permit the project to be carried out in whole or in part.

Review panels encourage an open discussion and exchange of views, as well as inform and involve large numbers of interested groups and members of the public. Individuals may present information, concerns and recommendations at public hearings. A panel allows the proponent to present the project to the public and explain the projected environmental effects, and provides opportunities for the public to hear the views of government experts about the project's potential environmental effects.

2.1.4 Joint Review Panel

When a project requires a decision from the federal government and another jurisdiction (for example, a province or the National Energy Board) the Minister may enter into an

agreement with that jurisdiction to conduct the environmental assessment through a joint review panel.

The agreements that govern a joint review panel must be signed by both responsible Ministers. The agreement, which establishes the panel, also sets out the rules for conducting the joint review process, the procedures for appointing panel members and the panel's terms of reference. For joint review panels, the Minister of the Environment appoints or approves the appointment of the Chairperson of the panel, appoints at least one of the other panel members and fixes or approves the terms of reference of the review. In many cases, where a joint review panel is held with a quasi-judicial body, such as the National Energy Board, the practices of the quasi-judicial body will be adopted to govern the proceedings. In some cases a quasi-judicial body has altered their rules of practice to accommodate the more flexible procedures provided for under the CEA Act.

2.1.5 Substitution

The Minister of the Environment, as an alternative to a review panel, has the discretionary power, pursuant to section 43 of the CEA Act, to approve the substitution of another federal review process used for assessing the environmental effects of projects, such as that of the National Energy Board or a body established under a land claims agreement, for an environmental assessment by a review panel under the CEA Act. The conditions for considering substitution, outlined in section 44 of the CEA Act are:

- the process includes consideration of factors required pursuant to subsections 16(1) and 16(2) of the *Canadian Environmental Assessment Act;*
- the public are given an opportunity to participate in the assessment;
- a report is submitted to the Minister of the Environment and is also published; and
- any additional criteria established by the Minister of the Environment.

2.2 The National Energy Board

The National Energy Board (NEB or the Board) is an independent federal agency established in 1959 by the Parliament of Canada to regulate international and interprovincial aspects of the oil, gas and electric utility industries. The purpose of the NEB is to promote safety, environmental protection and economic efficiency in the Canadian public interest, within the mandate set by Parliament, in the regulation of pipelines, energy development and trade. These principles guide NEB staff in carrying out and interpreting the organization's regulatory responsibilities. The NEB is accountable to Parliament through the Minister of Natural Resources Canada.

2.2.1 Members

Under the *National Energy Board Act* (NEB Act), up to nine permanent members of the Board (including the Chairperson and Vice-Chairperson), and up to six temporary members can be appointed at any given time. Members are appointed by the Governor in Council, and are initially appointed for a seven-year term. Reappointment may be for seven years or to the age of seventy. Members typically have a wide range of government and energy industry experience, and are subject to terms and conditions set out by the

Governor in Council to ensure their role as a member does not create a conflict of interest. A member shall not, during their term of office, accept or hold any office or employment inconsistent with the member's duties.

2.2.2 Public Hearings

The Board operates as a court of record, in a quasi-judicial fashion that is very similar to a civil court. Its powers include the swearing-in and the cross-examination of witnesses, and the taking of evidence. Before a hearing, individuals, interest groups, companies and other organizations are given an opportunity to register as intervenors or interested parties, and in this way can actively participate in the process.

The Board deals with approximately 750 applications annually. For major applications, the Board holds public hearings where applicants and interested parties can participate. These hearings can be either written or oral proceedings and are held at locations across Canada where there is a particular interest in the application and which will be most affected by the Board's decision. Normally, a panel consisting of three Board members is assigned to hear applications.

2.2.3 Public Participation

Members of the public are permitted to participate in the hearing in three ways: filing a letter of comment, providing an oral statement, or gaining intervenor status.

Letter of comment

A letter of comment may be filed with the Secretary of the Board when someone wishes to make their views known to the Board, but does not wish to directly participate at the oral phase of the hearing. The letter of comment states the writer's views on the application and should be accompanied by any facts or information that supports those views. Letters of comment are taken into consideration in the Board's proceedings, even though it is not sworn evidence and may not be given the same weight as other evidence in the proceedings, especially if the content is challenged.

Once filed, the letter becomes a public document. The Secretary of the Board provides copies of the letters of comment to all parties to the proceeding. An applicant, or any other party, may formally reply to the letter by serving a letter of response. In this case a copy is filed with the Board's Secretary and also becomes part of the public record.

People who file a letter of comment do not receive correspondence from the other parties involved in the review, and are not permitted to question parties or cross-examine intervenors.

Oral presentations

Oral statements may be presented by interested persons who do not wish to become intervenors, but who still wish to present their views to the Board. Oral presentations are made "under oath or affirmation" and are subject to questioning by the Board, the applicant, or other parties, as permitted by the Board. As a general rule, only parties

"adverse in interest" (opposed to the project) may seek leave to question oral statement makers.

Persons who make oral statements are not required to file anything in writing at the time of making their statements. Oral statement makers do not receive the application and are not entitled to make information requests, to cross-examine parties to the proceeding, or to provide final argument.

The content of and argument given in any oral statement is not known by any parties prior to the oral portion of the hearing, unless that interested party has accompanied their request with a letter of comment. While the content of the information is not known ahead of an oral statement being made, any prejudice suffered by a party as a result of the content of an oral statement can be rectified by cross-examination.

Intervenor status

To participate as an intervenor in a public hearing, interested parties must send a letter, facsimile, or formal legal submission to the Secretary of the Board stating their interest to participate and a supporting rationale. A time limit for the filing of interventions is set in the hearing order.

If a party is unable to show it would be affected by the Board's decision, the Board may refuse to recognize the party as an intervenor in the hearing. However, the Board recognizes that many public groups, such as environmental associations, may raise issues relevant to the broad public interest of Canadians and such groups are frequently given intervenor status.

It is not obligatory for an interested party to retain legal counsel in order to participate in a hearing. However, the NEB document, How to Participate in a Public Hearing, notes that because of the complexity of legislation involved and the quasi-judicial nature of NEB hearings, intervenors may wish to be represented by legal counsel.

Intervenors are provided the right to be served with a copy of the application, to file evidence, to request information from various parties, to ask questions in the hearing, to submit a final argument, and to participate in other ways during the proceedings.

Information sessions

While it does not occur for every hearing by the NEB, information sessions may be held ahead of hearings, in order to inform members of the public on the NEB's process and how they may become involved. These sessions are not for discussing the merits of the application, or for debating issues that should be considered in the hearings, rather they are for information purposes only.

Consultation on list of issues

Once the Board is satisfied that an application is complete, it issues a hearing order containing the procedures for the hearing. The order gives the location and date of the public hearing, and directions on procedures including the steps to be followed by the

applicant and intervenors, as well as any specific deadlines, such as the date by which intervention notices must be received. The Board issues a news release to announce the hearing, and the project proponent is required to advertise the hearings and basic information about the project.

Attached to the hearing order, in most cases, is a list of issues that are to be dealt with at the hearing, as well as a list of the parties involved. The Board holds a consultation period on the list of issues, permitting parties to suggest additional relevant issues to be discussed at the hearing.

2.2.4 Government Participation

In 2003, the National Energy Board launched an initiative to facilitate improved coordination and working relationships with other federal authorities involved in environmental assessments carried out within NEB processes. Subsequently, the Board created a new Federal Government Participant (FGP) role for federal authorities within the NEB hearing process.

The objective of this role is to support federal authorities in meeting their CEA Act responsibilities, while protecting the integrity of the NEB process. The FGP role works in tandem with the Federal Environmental Assessment Coordinator under the CEA Act to improve the understanding and the participation of other departments in NEB hearings.

The FGP role does not prevent departments from accessing all other participation options, including the provision of letters of comment, oral statements, and full intervenor status.

While FGPs are considered parties to the hearing and included on the distribution of parties, they are not served with all documentation in a hearing, as much of it is not of relevance to them. Parties to the hearing are required to serve a FGP with information and cross-examination requests. The federal authorities may ask information requests of the applicant, but not other intervenors or government participants. FGPs are also permitted to make written submissions.

The Board may ask questions of the FGP even when the FGP has not filed evidence, in order to determine whether the environmental evidence meets the FGP's needs. The Board, the applicant and the intervenors may ask information requests on the FGP's evidence. If the FGP objects to answering an information request, it is required to file a letter with the Board setting out the reasons for its objection.

A FGP may be subject to cross-examination, but only if leave of the Board is received.

2.2.5 NEB and the Environment

Even though not explicitly part of its legislative mandate and authority, the NEB nevertheless seeks to manage environmental issues throughout all phases of a regulated facility. The five main phases include the planning and application phase, the application

assessment and public hearing phase, the construction and post-construction phase, the operations and maintenance phase, and the abandonment phase.

The NEB has approximately 20 environmental specialists deployed to teams throughout the organization. These specialists deliver environmental assessments, environmental inspections, audits of environmental management systems, lands administration, and landowner complaint resolution.

Regulated companies are required to submit an environmental and socio-economic assessment as one part of a complete application. When the NEB receives an application, its staff assesses a range of issues related to the application, including environmental, socio-economic and land issues. The NEB fulfills its environmental assessment duties under the NEB Act, the *Mackenzie Valley Resource Management Act*, and the CEA Act. As stated earlier, for larger or more complex projects, the NEB will hold a public hearing to hear the views of the public.

Joint panel reviews
In the past, panel reviews under the CEA Act have often been integrated with the NEB's public hearing process under the NEB Act. This integration occurs through project-specific agreements between the two organizations, and typically, the general NEB rules of procedure are followed. The Minister of the Environment appoints one member to the review panel, who is appointed as a temporary member of the National Energy Board for the duration of the environmental assessment. The Minister also approves the appointment of another member of the NEB to act as the Chairperson of the joint review panel.

2.3 Substitution in the Case of the Emera Brunswick Pipeline

In January 2006, Maritimes and Northeast Pipeline Management Ltd. submitted a project proposal to the Canadian Environmental Assessment Agency and the National Energy Board for the proposed construction and operation of a 145-kilometre pipeline between the Canaport Liquefied Natural Gas Facility at Mispec Point in Saint John, New Brunswick to the international border near Saint Stephen, New Brunswick (the project).

The NEB notified potential federal and provincial authorities about the project, pursuant to the *Regulations Respecting the Coordination by Federal Authorities of Environmental Assessment Procedures and Requirements* under the CEA Act.

The NEB, DFO and TC were responsible authorities (RAs) pursuant to the CEA Act for the environmental assessment (EA) of the project. Environment Canada and the Canadian Transportation Agency identified themselves as possible RAs for the EA.

To assist in the EA process, Natural Resources Canada and Health Canada provided expert advice in relation to the project.

The project was also registered as an undertaking pursuant to the New Brunswick *Environmental Impact Assessment Regulation* under the New Brunswick *Clean Environment Act*. The New Brunswick Department of Environment and Local Government (NBDELG) administers this regulation and requires that an environmental impact assessment be carried out and approved by the Government of New Brunswick before the project can proceed.

In a letter, dated January 19, 2006, the NBDELG indicated that they would participate in a harmonized assessment process with the NEB. This type of harmonization has occurred in the past for reviews of other pipeline projects. In those cases, the province participated either as an intervenor or in the government participant role, and the NEB ensured that their review encompassed the information requirements of the province.

The NEB coordinated the EA process with all involved federal and provincial departments. The Agency was also involved in activities related to the project in its usual coordination role prior to the environmental assessment being referred to a panel review. During the hearings, the Agency administered the Participant Funding Program, allocating the financial assistance to eligible review participants.

In March 2006, the NEB, in consultation with other federal authorities involved in the assessment, requested that the Minister of the Environment refer the assessment of the project to a review panel pursuant to section 25 of the CEA Act. The NEB further requested that the review panel process be conducted by the NEB under section 43, the substitution provisions of the CEA Act, as the NEB has a process and responsibility for assessing the environmental effects of a project under its enabling legislation.

In May 2006, the Minister of the Environment wrote to the Chairman of the NEB approving the request for substitution of process, subject to a number of conditions that were subsequently agreed to by the NEB. The substitution arrangement was approved in order to allow the federal authorities involved and the Agency an opportunity to test the substitution provisions of the CEA Act on a pilot basis. During that same month, Maritimes and Northeast Pipeline Management Ltd. notified the NEB that Emera Brunswick Pipeline Company (the proponent) had taken over ownership of the project.

2.3.1 Public Hearings

Public hearings were held as part of the NEB review of the project from November 6 to 20, 2006. In accordance with NEB hearing procedures, the public was invited to participate.

Seventy-two parties registered as intervenors and three parties (Fisheries and Oceans Canada, Health Canada and Natural Resources Canada) registered as government participants in the hearing process. In addition, 184 letters of comment from the public were entered onto the record and oral statements were provided by 19 individuals, two of whom represented organizations in Saint John. The NEB panel considered these comments from the public.

Prior to the public hearings, the NEB held public information sessions to inform them of the process, and allow consultation on key guiding documents. These included public meetings on April 5, as well as on June 19 and 20, 2006 and a pre-hearing planning session on October 12, 2006.

Additionally, two public consultation periods were provided to allow comments on the Environmental Assessment Scoping Document and the list of issues. The 33-day comment period on the Environmental Assessment Scoping Document ended June 7, 2006, while the period for comment on the list of issues was 25 days, ending on July 4, 2006.

Application deadlines
Those who wished to register as intervenors were required to do so by July 4, 2006, 25 days after the hearing order was issued, and roughly two months after the Minister of the Environment referred the project to a substituted review panel.

Individuals and groups wishing to submit a letter of comment, or register to make an oral statement were required to file notice with the Board by September 12, 2006, 95 days after the hearing order was issued, and roughly four months after the notice of commencement was published.

Several late applications to make an oral statement or provide a letter of comment were received. The Board used established criteria when considering whether to accept applications or letters of comment submitted after deadline. These criteria included whether the applicant for the late participation provided a justification for their interest in the application, a rationale for applying late, and whether any other party would be prejudiced by their participation. Based on these criteria, the Board allowed 4 of the 11 late applicants to participate.

2.3.2 Final Arguments and Reports

Argument is the final stage of the hearing, and is where the applicant and intervenors state their views on the issues that have been discussed. The basic difference between evidence and argument is that evidence presents facts and argument presents conclusions based on the evidence. In this case, the Board accepted final arguments submitted in written form. The deadline for intervenors to file written arguments was December 15, 2006, after which the proponent had 7 days to file a rebuttal.

The Board released its report on April 11, 2007, and recommended that the project be allowed to proceed to regulatory and departmental decision making, as long as the recommendations in the Board's report were made part of the requirements of any approval by the NEB. The other responsible authorities, with the approval of the Governor in Council, responded to the recommendations contained in the NEB Review Panel Report on May 17, 2007.

2.3.3 NEB Reasons for Decision

In fulfilling its obligations under the National Energy Board legislation, the NEB prepares a document outlining its reasons for decision. The Board releases the Reasons for Decision document to the applicant, all interested parties in the proceedings, and persons on the Board's mailing list. The Reasons for Decision shall be issued before any required approvals by the Governor in Council. In addition, the Board issues a news release outlining its decision.

The Board released its Reasons for Decision document to the public on May 31, 2007.

2.3.4 Differences with the Joint Panel Process

Past panel reviews under the CEA Act have been integrated with the NEB's public hearing process under the NEB Act where a project required review under both Acts. The hearing process used for the Emera Brunswick Pipeline proceeding was very similar to that used for the previous joint review panels. The primary differences, as noted in the Environmental Assessment Report, between a panel review carried out in an integrated manner with the NEB public hearing process and the substituted process for the Emera Brunswick Pipeline are:

- all panel members are members of the NEB in the substituted process (rather than other federal and/or provincial appointees) and the Minister of the Environment did not appoint, nor approve the appointment of any of the panel members; and
- the project was quickly referred to a panel review and a substituted process as opposed to undergoing a more extended EA track decision process which would have included a public consultation process on the proposed scope of the EA followed by the preparation and submission of a track recommendation report to the Minister of the Environment.

2.3.5 The Participant Funding Program under the Canadian Environmental Assessment Act

The Canadian Environmental Assessment Agency administers a Participant Funding Program (PFP) to support individuals and non-profit organizations interested in participating in environmental assessments. This program exists for all comprehensive studies, panel reviews, and joint panel reviews conducted under the CEA Act, but does not extend to substituted panels. In the case of the substituted process for the assessment of the Emera Brunswick Pipeline Project, the Agency exceptionally agreed to administer the Participant Funding Program in order to allow for the pilot evaluation to take place, although the Board hearings were not a process under the CEA Act.

An independent funding committee assessed applications for funding and awarded a total of $135,900 to six parties. The funds were to assist recipients in reviewing the application and in preparing for and participating in EA portions of the NEB proceeding.

These parties were required to secure intervenor status, and this was facilitated by the Board.

Successful recipients of the PFP funding were announced on July 18, 2006 although some of the parties did not actually receive financial assistance until September. The deadline for intervenors to submit information requests to the proponent was August 15, 2006, before some parties received their funds. This required groups and individuals to file formal requests with the Board to extend the deadline for filing evidence, to allow time to hire consultants, and to have information requests prepared and submitted.

On August 15, 2006, the Board extended the deadline for one group, the Friends of Rockwood Park, to file its evidence. For efficiency and to avoid confusion related to deadlines, the Board later extended deadlines for all intervenors to match those granted to the Friends of Rockwood Park. In light of this extension, the deadline for the proponent to file and serve its reply evidence was also extended.

2.3.6 Timeline of Events

A summary of the key events and duration of process intervals is presented in Table 1. A more detailed table outlining the entire timeline of events in this process is presented in Appendix 2.

Although some preliminary work by the NEB occurred before an environmental assessment was triggered, this analysis focused on timelines related to requirements of the environmental assessment process.

Table 1: Key process events, dates, and time durations for the substituted process.

Process Event	Date	Days from NOC Posting
[redacted]	23-Feb-06	0
Letter sent to the Minister of the Environment recommending a substituted review panel (CEA Act section 25 referral). Letter includes the draft scope, confirmation of support from RAs and the province, and confirmation of participant funding from the Agency.	16-Mar-06	21
[redacted]	21-Mar-06	26
Commitment from the NEB to the Agency regarding [redacted] process requirements/considerations.	27-Mar-06	32
Minister's decision on EA referral and substitution.	3-May-06	69
Draft scoping document made available for public consultation (RAs and province consulted if scope changes significantly as a result of public comment or project updates).	5-May-06	71

[illegible]	23-May-06	89
Complete section 52 application filed by Emera Brunswick Pipeline Company (EBPC).	23-May-06	89
Consultation period on draft scoping document closes.	7-Jun-06	104
NEB hearing order issued, including list of issues and the deadline (typically about 2 weeks) for registering as an intervenor or indicating intent to provide written or oral comments (Is this typically 2 weeks as well?)	9-Jun-06	106
Final scoping document issued.	23-Jun-06	120
List of parties released.	10-Jul-06	137
Public hearings start, including further information requests and oral hearings.	6-Nov-06	256
Public hearings end.	20-Nov-06	270
EBPC deadline to reply to intervenor final arguments/ close of written arguments.	22-Dec-06	302
Panel report submitted to the Minister of the Environment (public release)	11-Apr-07	412
Government response receives GIC approval.	17-May-07	448
RAs take decisions on the EA.	17-May-07	448
[illegible]	24-May-07	455
NEB posts decision on the CEAR	31-May-07	462
NEB releases Reasons for Decision document.	31-May-07	510
GIC approval of NEB decision.	7-Jun-07	517

= Period represented by the substituted process

Legend
Federal Responsible Authorities (RAs) and Fedaral Authorities (FAs)
[illegible]
Proponent
National Energy Board
Participant
Deadline
Public Consultation
Minister/Cabinet/Governor in Council

Responsible authorities are required to post the notice of the commencement of each environmental assessment under the CEA Act on the Canadian Environmental Assessment Registry Internet site (CEAR). This is a common milestone for all environmental assessments and has been used to calculate all subsequent time periods.

Four time periods have been considered in this evaluation of the duration of process intervals: the time from the posting of the Notice of Commencement on CEAR to the time the assessment was referred to a review panel; the time from the referral of the assessment to a review panel to the release of the Review Panel Environmental

Successful recipients of the PFP funding were announced on July 18, 2006 although some of the parties did not actually receive financial assistance until September. The deadline for intervenors to submit information requests to the proponent was August 15, 2006, before some parties received their funds. This required groups and individuals to file formal requests with the Board to extend the deadline for filing evidence, to allow time to hire consultants, and to have information requests prepared and submitted.

On August 15, 2006, the Board extended the deadline for one group, the Friends of Rockwood Park, to file its evidence. For efficiency and to avoid confusion related to deadlines, the Board later extended deadlines for all intervenors to match those granted to the Friends of Rockwood Park. In light of this extension, the deadline for the proponent to file and serve its reply evidence was also extended.

2.3.6 Timeline of Events

A summary of the key events and duration of process intervals is presented in Table 1. A more detailed table outlining the entire timeline of events in this process is presented in Appendix 2.

Although some preliminary work by the NEB occurred before an environmental assessment was triggered, this analysis focused on timelines related to requirements of the environmental assessment process.

Table 1: Key process events, dates, and time durations for the substituted process.

Process Event	Date	Days from NOC Posting
Establishment of the Canadian Environmental Assessment Registry (CEAR) for posting of the notice of commencement	23-Feb-06	0
Letter sent to the Minister of the Environment recommending a substituted review panel (CEA Act section 25 referral). Letter includes the draft scope, confirmation of support from RAs and the province, and confirmation of participant funding from the Agency.	16-Mar-06	21
The Agency responds to the NEB's request for referral and substitution	21-Mar-06	26
Commitment from the NEB to the Agency regarding process requirements/conditions	27-Mar-06	32
Minister's decision on EA referral and substitution.	3-May-06	69
Draft scoping document made available for public consultation (RAs and province consulted if scope changes significantly as a result of public comment or project updates).	5-May-06	71

The Agency Participant Funding Program (PFP) announced with 30-day application period	23-May-06	89
Complete section 52 application filed by Emera Brunswick Pipeline Company (EBPC).	23-May-06	89
Consultation period on draft scoping document closes.	7-Jun-06	104
NEB hearing order issued, including list of issues and the deadline (typically about 2 weeks) for registering as an intervenor or indicating intent to provide written or oral comments (is this typically 2 weeks as well?).	9-Jun-06	106
Final scoping document issued.	23-Jun-06	120
List of parties released.	10-Jul-06	137
Public hearings start, including further information requests and oral hearings.	6-Nov-06	256
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NEB posts decision on the CEAR	31-May-07	462
NEB releases Reasons for Decision document.	31-May-07	510
GIC approval of NEB decision.	7-Jun-07	517

= Period represented by the substituted process

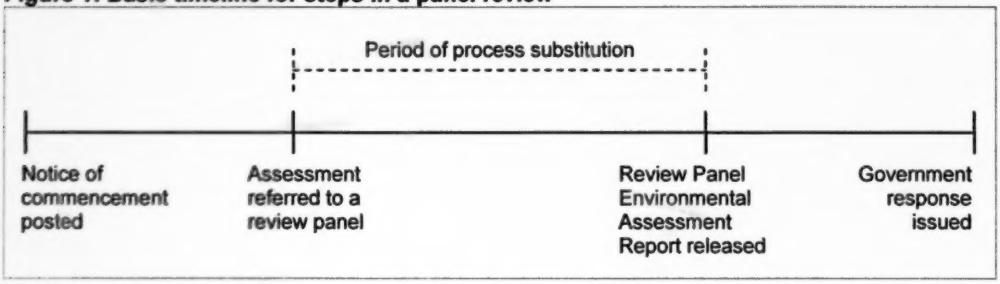
Legend
Federal Responsible Authorities (RAs) and Fedaral Authorities (FAs)
Government of New Brunswick
Proponent
National Energy Board
[illegible]
Participant
Deadline
Public Consultation
Minister/Cabinet/Governor in Council

Responsible authorities are required to post the notice of the commencement of each environmental assessment under the CEA Act on the Canadian Environmental Assessment Registry Internet site (CEAR). This is a common milestone for all environmental assessments and has been used to calculate all subsequent time periods.

Four time periods have been considered in this evaluation of the duration of process intervals: the time from the posting of the Notice of Commencement on CEAR to the time the assessment was referred to a review panel; the time from the referral of the assessment to a review panel to the release of the Review Panel Environmental

Assessment Report; the time from the release of the Review Panel Environmental Assessment Report to the release of the government response of the review panel environmental assessment report; and the overall process time, from the notice of commencement to the release of a government response to the review panel environmental assessment report. Figure 1 shows a basic timeline of events for a panel review, and the specific period in which the substituted process occurred. Although only part of the overall environmental assessment review process was replaced by the substituted NEB hearing, the evaluation examines the duration of all the relevant milestone periods.

Figure 1: Basic timeline for steps in a panel review


Period of process substitution
Notice of commencement posted
Assessment referred to a review panel
Review Panel Environmental Assessment Report released
Government response issued

The substituted process resulted in the following timelines for those four intervals:

Notice of commencement publication to referral to a review panel	71 days
Referral to a review panel to publication of Review Panel Environmental Assessment Report	342 days
Review Panel Environmental Assessment Report released to government response issued	36 days
Notice of commencement to publication of government response to the Environmental Assessment Report	455 days

2.4 Principal Expectations of Substitution

2.4.1 Expectations of the National Energy Board

The expectations of the National Energy Board for a substituted process were presented in the document NEB Substitution under the *CEA Act*: NEB/CEA Agency Discussion Paper. This discussion paper was prepared by the National Energy Board and provided to the Agency in July 2004. The paper was not prepared specifically for the Emera Brunswick Pipeline Project, but rather to inform, in a general way, the application of the substitution provisions in the CEA Act.

The substituted process proposed by the NEB was expected to achieve the following objectives, while employing panel members with experience with assessments under the CEA Act:

- Minimize potential duplication where the NEB has responsibilities to assess a project under two separate federal processes;
- Minimize procedural redundancy;
- Allow the Agency resources to be more focused on other federal EAs where an additional review body does not exist;

- Reduce unnecessary complexity and uncertainty regarding regulatory process for the NEB and its regulated industries; and
- Be responsive to the need for efficient and effective environmental assessments.

For example, time savings would be realized by having to avoid appointment of a review panel member by the Minister of the Environment.

One issue that the paper identified was possible time savings that might be achieved as a result of substituting the NEB process for a panel review under the CEA Act, rather than conducting a joint process. The NEB paper identified three elements where these time savings could be found. They are:

Early track decision process (section 21)

Comprehensive studies are intended to address projects that have the potential to cause significant adverse environmental effects, but that do not warrant review by an independent panel.

Under section 21 of the CEA Act, the Minister of the Environment performs a formal step, involving public consultation, early in the process. This step, commonly referred to as the Minister's track decision, determines whether the assessment should continue as a comprehensive study or be referred to a panel under section 25.

For projects that commence as comprehensive studies, the NEB envisioned that a time savings would be realized by proceeding directly to a panel review where a project has the potential to cause significant adverse environmental effects, or if public concerns warrant a referral to a review panel, in accordance with the criteria in section 25. This section 25 referral would eliminate the preparation work required for a section 21 track decision when the project is such that the likely determination is that the assessment should be referred to a panel.

The time and effort savings at this stage of the process, envisioned by the National Energy Board in the context of substitution, were as follows:

- 50 person-days saved by avoiding section 21 public consultation (NEB);
- 10 person-days saved by negating need for preparation of track report for the Minister;
- 10 person-days saved during process of obtaining Minister's decision (Agency); and
- **70 person-days equivalent to 70 days for overall process in this instance.**

It is important to note that a process for assessing the environmental effects of a project that is followed by a federal authority, such as the National Energy Board, may only be substituted in the case of an environmental assessment by a review panel. Approval of substitution must take place after the Minister of the Environment has referred the project to that type of assessment, pursuant to sections 21.1, 25 or 28 of the CEA Act.

It is also important to note that the use of section 25 as opposed to section 21 to refer a project to the Minister of the Environment for a panel review is not relevant to the use of substitution. To the extent that this can result in time savings, the same could be achieved for joint review panels.

Hearing panel composition (section 33(1)(a))

The CEA Act outlines criteria (related to bias, conflict of interest, knowledge and experience) which the Minister of the Environment shall follow when appointing the members of a review panel. Conformance to these criteria and appointment of members by the Minister and as temporary members of the NEB means that confirming the panel composition can require considerable analysis and take a number of weeks.

The NEB asserts that many of its members are competent to hear and evaluate environmental evidence as members of a review panel. Many members of the NEB have been members of joint review panels established by the Minister of the Environment and the NEB in the past, and are familiar with the objectives and procedures of environmental assessments. Members also hold experience in environmental regulation and possess diverse professional backgrounds and regional representation. Additionally, the Governor in Council may appoint temporary members to the Board to improve regional representation or specific expertise where necessary.

In the NEB's discussion paper *NEB Substitution Under the CEA Act*, it is noted that most joint review panels would likely consist of two NEB members (who are appointed on a standing basis and assigned to the panel), and one member appointed by the Minister of the Environment specifically for the panel review, and who is also appointed as a temporary member of the National Energy Board. The Minister of the Environment either appoints or approves the appointment of the panel's chairperson. It is also relevant to note that where an NEB hearing is held in conjunction with an environmental assessment at the screening or comprehensive study level, the environmental effects are assessed by a panel composed solely of members of the National Energy Board.

Through a substituted process, and using only NEB appointed panel members, the National Energy Board envisioned the following process time savings:

- 20 person-days saved by avoiding the CEA Act panel appointment process (Agency);
- 10 person-days saved by negating the need to prepare joint review panel terms of reference (as this document is not required for an NEB-only process where other documents such as the hearing order and list of issues govern the process) (Agency);
- 10 person-days saved by avoiding the need to train CEA Act panel member in NEB regulatory process (NEB); and
- **40 person-days overall, 30 days for overall process.**

Government response under section 37(1.1)

Section 37(1.1) of the CEA Act requires that where a report is submitted by a review panel, the responsible authority shall take into consideration the report, and with the approval of the Governor in Council, respond to the report.

Under section 52 of the NEB Act, the Board may, subject to the approval of the Governor in Council, issue a certificate in respect of a pipeline if the Board is satisfied that the pipeline is required by the present and future public convenience and necessity. In considering an application for a certificate, the Board shall have regard to all considerations that appear to be relevant, and may have regard to, among other issues, any public interest that in the Board's opinion may be affected by the granting or the refusing of the application, including environmental considerations.

The requirement by both Acts to obtain the approval of the Governor in Council results in some procedural duplication, where a project would require two separate Cabinet approvals.

Through a fully substituted process where the RA would use the NEB Governor in Council approval to make its decision, the National Energy Board envisioned the following process time savings:

- 50 person-days saved (RAs, NEB) through a single "trip to cabinet" of the NEB Act section 52 decision (Cabinet approval of EA report not required).

Section 44(*c*) of the CEA Act states "at the end of the assessment, a report will be submitted to the Minister". The provision for substitution states "the Minister may approve the substitution of a process for an environmental assessment by a review panel". This indicates that all requirements of the CEA Act which occur after the environmental assessment still apply, regardless of whether the process was substituted or not. This includes submission of the panel report and the government response. The use of the substitution provisions of the CEA Act therefore does not result in any time savings at this stage.

2.4.2 Expectations of the Canadian Environmental Assessment Agency

The primary expectation of the Agency was that the substituted process would comply with the provisions of the CEA Act. To ensure this, conditions for the substituted process were agreed to by the President of the Agency and the Chairman of the National Energy Board. The five conditions as outlined in a March 21, 2006 letter from the President to the Chairman were:

Condition 1 - *The substituted process for the Emera Brunswick Pipeline Project (substituted process) shall apply fully the scope of assessment, factors to be considered and scope of factors as set out in the Environmental Assessment Scoping Document provided as Attachment 1 to the NEB referral letter.*

Condition 2 - *The substituted process shall make the Environmental Assessment Scoping Document publicly available.*

Condition 3 - *The substituted process shall include informal opportunities for the public to convey their views to the National Energy Board hearing panel, including written and oral presentations.*

Condition 4 - *On the completion of the environmental assessment, the National Energy Board shall submit a report (Report) to the Minister of the Environment and the responsible authority Ministers.*

Condition 5 - *The (environmental assessment) report submitted to the Minister of the Environment shall set out the National Energy Board's rationale, findings, conclusions and recommendations, including mitigation measures to be implemented, the follow-up program recommended by the NEB, and publication of the report. In addition, the NEB was to assist the Agency in ensuring the successful applicants of the Participant Funding Program received intervenor status in the hearings, and that the NEB submit a report on the participation of successful Participant Funding Program applicants, ensuring they had provided evidence at the hearings regarding the factors considered or other environmental assessment issues.*

2.4.3 Participant Expectations of the Substituted Process

Respondents to the Ipsos-Reid participant experience survey indicated expectations based on their type of involvement with the process, and their experience with project reviews. Members of the general public expected their views to be considered in a meaningful way and that the outcome of the review would reflect their input, including considerations of alternatives and the evaluation of cumulative effects. Conversely, participants who were involved in the review in a professional capacity had often taken part in other project reviews, some under the National Energy Board, and expected the substituted process to reflect their previous experiences.

In general, participants expected to have their viewpoints heard, and given some weight in the hearings, and deliberations of the Board.

3. Evaluation

The following section addresses the issues outlined in the Terms of Reference for the Evaluation of the Substituted Emera Brunswick Pipeline Project Environmental Assessment Process, including whether the conditions for substitution, and the principal expectations of stakeholders were met. This section focuses on considerations that have been raised throughout the information-gathering stages of the evaluation process, including the results of the participant experience survey.

3.1 Conditions for Substitution

This section examines whether, and if so how, each of the specific conditions for substitution outlined in the Agency's letter to the NEB were met. The evaluation identifies the presence or absence of these issues and is not intended as a substantive analysis of their content.

3.1.1 Condition 1

The substituted process for the Emera Brunswick Pipeline Project (substituted process) shall apply fully the scope of assessment, factors to be considered and scope of factors as set out in the Environmental Assessment Scoping Document provided as Attachment 1 to the NEB referral letter.

This condition was met. Within the Environmental Assessment Scoping Document three key areas are included to determine the scope of the environmental assessment: the scope of the project; the factors to be considered, and the scope of those factors.

Scope of the project
The scope of the project was considered throughout the environmental assessment report, including all listed components of the project itself. The only area excluded was the issue of project abandonment, where the NEB noted that "pursuant to the NEB Act, an application would be required to abandon the facility, at which time the environmental effects would be assessed by the NEB and other relevant agencies".

Factors to be considered
All factors to be considered were included in the final environmental assessment report of the Board. Cross-references between the factors to be considered and specific report sections are presented in Appendix 3.

Scope of factors
The issues identified in this section were generally included throughout the Environmental Assessment Report and in the analysis of the effects of the project. Some issues (natural variation of a population or ecological component, and the time required for a population to recover from an effect and return to pre-project conditions) were included in the analysis as methods of determining the level of significance of an effect. Other issues, such as the timing of sensitive lifecycle phases of wildlife species in relation to the project were addressed briefly in the listed mitigation measures.

3.1.2 Condition 2

The substituted process shall make the Environmental Assessment Scoping Document publicly available.

This condition was met. The NEB posted the draft version of the Environmental Assessment Scoping Document on their registry site on May 5, 2006 as document A12021 or G-28-b -- A0U1V9. The Agency also posted the draft version of the scoping document on the Canadian Environmental Assessment Registry on May 8, 2006. The final Environmental Assessment Scoping Document was made available on the National Energy Board Public Registry website as document A12360 on June 23, 2006.

Written comments from the public were received on the draft scoping document between May 5 and June 7, 2006. Comments were considered by the NEB, but no substantial changes were made to the scoping document. Following the public comment period, the Board issued the following statement:

"The Board has therefore determined that the scope of the environmental assessment as outlined in the draft Environmental Assessment Scoping Document is appropriate. The Environmental Assessment Scoping Document has been modified to reflect minor changes in the description of the components listed under the scope of the project to accurately reflect the project as proposed by Emera Brunswick Pipeline Company Ltd. in its application to the NEB."

3.1.3 Condition 3

The substituted process shall include informal opportunities for the public to convey their views to the National Energy Board hearing panel, including written and oral presentations.

This condition was generally met. Section 2 of this report has outlined the three methods by which interested parties could become active in the review process. They can either become intervenors, provide oral statements, or submit a letter of comment. The role of intervenor is a highly structured one, and thus should not be considered an informal opportunity. However, the oral statements and letters of comment have been considered as informal opportunities for the purposes of this evaluation.

The deadline to file intent to present an oral statement, or write a letter of comment was much later than the deadline to apply for intervenor status, although this was still well before the hearing.

Written Statements
The public was afforded the opportunity to express their views through written statements. The NEB's hearing order invited any interested person, who did not wish to

register as an intervenor and become a party in the proceeding, but who wished to comment on the application, to file a letter of comment.

The hearing order was issued on June 9, 2006 and the deadline for written letters of comment was September 12, 2006 – a period of roughly three months. During this time the Board received 184 letters of comment prior to the deadline.

Written submissions were not made under oath or tested by cross-examination at the Board hearings. Section 5.5 of the NEB's Environmental Assessment Report summarizes public comments received during the hearings. The majority of the letters of comment received expressed opinions on the project, or concerns related to specific issues, rather than providing evidence calling the proponent's information into question.

The standard, non-substituted, NEB public hearing process may also provide this opportunity for the public, at the discretion of the Board.

Oral presentations
The public were afforded the opportunity to express their views through oral presentations to the Board. The NEB's hearing order provided this option to allow interested persons who did not wish to intervene an opportunity to give their views to the Board.

The period to make oral statements was the same as for written letters of comment, roughly three months, and prior to the deadline the Board received 19 oral statement applications.

The Board set aside time to hear the 19 oral statements and heard these statements on November 8, 13 and 17, 2006. Each statement was made under oath or affirmation and had potential to be subject to questions by the Board, the applicant, or other intervenors that obtained the leave of the Board. Two parties were cross-examined. According to the National Energy Board's guidance material, evidence that is cross-examined may be attributed more weight during deliberations, depending on the circumstances and evidence presented.

Intervenors who wished to cross-examine were required to state the nature of their intended question to the Board for approval before questioning the presenter. This was granted or denied on the basis of whether or not the Board felt it required further clarification, or understanding of the views expressed by the individual giving the statement (Transcript paragraph 7541).

Other informal opportunities
The Board also held information sessions on the evenings of June 19 and 20, 2006 to provide members of the public with information on the NEB's role and hearing process. These information sessions also outlined the different ways that the public could become involved in the hearing. The NEB also held a pre-hearing planning session on October 12, 2006.

It was noted in the hearing order that these sessions were not a forum for discussing the merits or substance of the application, but rather to inform the public of the NEB's procedures, and how the process of the hearings would unfold.

3.1.4 Condition 4

On the completion of the environmental assessment, the National Energy Board shall submit a report (Report) to the Minister of the Environment and the responsible authority Ministers.

This condition was met. The Environmental Assessment Report was released to the public on April 11, 2007 and transmitted to the Governor in Council, including the other responsible authority Ministers, at that time.

3.1.5 Condition 5

The (environmental assessment) report submitted to the Minister of the Environment shall set out the National Energy Board's rationale, findings, conclusions and recommendations, including mitigation measures to be implemented, the follow-up program recommended by the NEB, and publication of the report. In addition, the NEB shall assist the Agency in ensuring the successful applicants of the Participant Funding Program receive intervenor status in the hearings, and the NEB shall submit a report on the participation of successful Participant Funding Program applicants, ensuring they had provided evidence at the hearings regarding the factors considered or other environmental assessment issues.

This condition was met. The Environmental Assessment Report submitted to the Minister of the Environment included the Board's rationale, findings, conclusions and recommendations (Section 9.0). Additionally, the Board identified mitigation measures to be implemented throughout the life of the project and the recommended follow-up program (Section 7.5). The report was also published on both the Board and the Agency's websites, as noted above.

Additionally the NEB was required to assist the Agency in ensuring successful recipients of the PFP were given intervenor status in the hearings, and to provide the Agency with a report on the participation of the participants who had received funding, following the submission of the EA report to the Minister of the Environment. The report on participant participation in the PFP was provided in a conference call between the NEB and the Agency in the July, 2007.

National Energy Board Views of the Substituted Process

From the perspective of the National Energy Board, the pilot substitution process under the CEA Act was considered to have been a success. The Board, in their Environmental Assessment Report, noted that the hearing process successfully met the conditions, and objectives for substitution.

CEA Act Requirements: The process considered the full scope of the environmental assessment as set out in the Environmental Assessment Scoping Document.

Public Access: Information about the process being undertaken, including the Environmental Assessment Scoping Document, and the evidence considered as part of the process was available to the public.

Public Participation: The process included opportunities for the public to convey their views to the Board's hearing panel, including written and oral presentations.

Reporting to Government: The Board completed its EA report for submission to the Minister of the Environment and the responsible authority Ministers.

The hearing process, as an integrated process considering environmental assessment, as well as other issues relevant to the public interest, allowed the Board to hear from a broad spectrum of participants on a wide range of issues. It was noted that the input was significant to the Board in its deliberations.

3.2 Analysis of Expectations and Findings

3.2.1 National Energy Board

The following sections examine whether, and if so how, the specific expectations of the NEB (as outlined in Section 2.4.1 of this report) were met in this case.

(i) Minimization of duplication

Minimize potential duplication where two federal authorities have a process and a responsibility for assessing the environmental effects of a project under their respective enabling legislations.

Potential duplication was minimized as one set of public hearings was held and served the purposes of both the NEB Act and the CEA Act review processes.

Panel members

As noted in Section 2.2 of this report, the NEB has up to nine permanent members and six temporary members. The substituted process drew on the expertise of the Board members selected from the roster to review the environmental aspects of the proposed project, as well as other social and economic considerations, as required by the NEB Act. The NEB estimated, in a 2004 discussion paper, described above in Section 2.4.1 of this

report, that 30 person-days and 30 process days would be avoided by this method. It is not possible to assess whether the savings actually equalled the expected 30 days, nevertheless it is safe to assume that a time savings was realized and some certainty was added to the process through the use of an existing pool of Board members. However, the reliance of the process solely on members of the National Energy Board did lead to the perception among some participants of perceived bias in the panel members (see Panel Composition in Section 3.3 below).

Public hearing
Information presented by intervenors, through oral statements, or provided in letters of comment was considered for all aspects of the review processes, where appropriate. Although only one set of hearings was required for both processes, this likely would have been the case regardless of whether or not a substituted process was used. The Agency and the NEB have coordinated joint panel reviews in the past and it should be noted that potential duplication is equally and similarly minimized through the use of the CEA Act joint panel review provisions. These reviews have been governed by formal project-level agreements between the two organizations, and have satisfied the needs of each.

Remaining duplication
Despite use of the substituted process some procedural duplication remained in this case, as follows:

Terms of reference for the review
The National Energy Board created two documents to guide the scope of the review for the purposes of both the environmental assessment, and the NEB public hearing. In addition to the creation of two separate documents, public comment periods were held in order to receive comments and recommendations with respect to both documents.

Public comments on the Environmental Assessment Scoping Document, as required under the CEA Act, were received by the Board from May 5 to June 7, 2006. An additional public comment period was held on the list of issues contained in the hearing order from June 9 to July 4, 2006, as required under the NEB Act.

In terms of content, the list of issues required that the factors outlined in section 16(1) and (2) of the CEA Act be considered in the NEB review. Section 2.2 of the Environmental Assessment Scoping Document also included these factors, but also defined the scope to which they would be considered, as well as the scope of the project, pursuant to the requirements of the CEA Act.

During the hearings, issues were heard as presented, and the applicant and intervenors were not required to identify whether they were responding to the list of issues or the environmental assessment. Staff of the NEB categorized the issues appropriately as part of their analysis.

Reporting and Cabinet approval

The first report, produced by the Board, was needed to meet the requirements of the environmental assessment process (section 37(1.1)(*a*) of the CEA Act), as outlined in the conditions for the approval of substitution (See Condition 4, above). This report was submitted in April 2007. The NEB, to meet the needs of their own Act, also submitted a Reasons for Decision document for Cabinet approval, which addressed the issues of their broader mandate under section 52 of the NEB Act.

The government response to the Environmental Assessment Report, and the Reasons for Decision were both required to be tabled with the Cabinet for approval. These documents were brought forward separately, and as such Cabinet was required to make two decisions on the same project – one based on the environmental effects under the CEA Act, and one on the public convenience and necessity under the NEB Act.

The NEB identified this overlap of effort in their discussion document, that stated "the government response for review panels duplicates and delays GIC approval required under section 52 of the NEB Act, resulting in 'two trips to Cabinet' for the same project".

In any case, the legal requirements of the CEA Act and the NEB Act are such that separate reports must be submitted to the federal cabinet under each Act for approvals and response, regardless of whether the process is joint, substituted, or separate. The result of this is that a substituted process will not reduce the reporting requirements as set out in the various pieces of governing legislation.

(ii) Human Resources at the Canadian Environmental Assessment Agency

The National Energy Board envisioned that the use of substitution would allow the Agency to utilize human resources more for other federal environmental assessments where an additional review body does not exist. While exact numbers are not available, it is estimated that time was saved allowing up to 1.0 full time equivalent (FTE) position at the Agency to focus on other panel reviews during the time period of the Emera Brunswick Pipeline substituted process. It is, however, unknown whether it resulted in any additional pressure on the NEB's human resources.

(iii) Reduce unnecessary complexity and uncertainty regarding regulatory process for the NEB and its regulated industries

The release of the hearing order on June 9, 2006 provided a great deal of certainty to the process. The hearing order contained a timetable of events which was adhered to rigidly throughout the project review. Changes to the dates outlined in the hearing order were only allowed with the permission of the Board, and after ensuring that no party would be unduly prejudiced by the Board granting an extension of a deadline. This timetable, and the adherence to it, gave notice to all participants of all key stages in the process. However, the same type of hearing order would or could be used in the case of joint panel reviews. Any reduction of unnecessary complexity and uncertainty would therefore be, on a comparative basis, at best marginal.

(iv) Be responsive to the need for efficient and effective EA

This analysis did not assess the quality of the environmental assessment reviewed by the National Energy Board. The overall effectiveness of the process, in terms of ensuring the identification, implementation and efficacy of measures to mitigate potential environmental effects, may not be seen for several years to come.

To determine the efficiency of the process, a number of review phases were identified and the time to complete them determined and compared generally to other review panels administered under the CEA Act. It is important to recognize that comparing review phases on the basis of the number of days lacks key context for why some processes may have taken longer than others. A number of factors, such as the complexity of the proposed project, requests to the proponent to provide additional information or ongoing provincial processes, may require extending timelines. Alternatively, high profile projects may be allocated additional resources to ensure their prompt review and completion. This context is lost when simply comparing the number of days taken to complete a particular phase of the review.

In terms of efficiency and timeliness, the overall review process – from the triggering of the environmental assessment to release of a government response – was shorter than other panel reviews under the CEA Act that have commenced since 2003, whether federal-only, or a joint review panel with other jurisdictions or other federal review bodies. Major aspects of the review, although not considered to be part of the substituted process, were also faster than the average timelines for similar periods. These major aspects include the time a notice of commencement is posted on CEAR to the point a project is referred to a review panel. Table 2 shows how the substituted process for the Emera Brunswick Pipeline review compares to other recent panel reviews.

Table 2: Timelines for review phase of panel reviews (equivalent to the phase of the EA which was substituted by the NEB review of the project)

Project	Referral to Panel Report
Cacouna Energy Project	478
Eastmain-1-A and Rupert Diversion Project	1376
Emera Brunswick Pipeline Company Ltd. Brunswick Pipeline Project	342
Kearl Oil Sands Project - Mine Development	258
Kemess North Gold-Copper Mine	917
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Some of the panels examined in Table 2 had shorter durations for the review phase than that of the substituted process. These timelines provide an indication of process timing, however do not provide context on why the process may take longer in some circumstances. Proponent preparedness, harmonization requirements between jurisdictions, complexity of the project and litigation in respect of a project are all variables that could extend the timelines at any point, regardless of whether a substituted process is used.

3.2.2 Canadian Environmental Assessment Agency

The overriding expectation of the Agency was that the conditions for substitution as outlined by the Minister of the Environment would be met. These conditions were satisfied for the most part, as identified in Section 3.1 of this report.

3.2.3 Participants and Intervenors

The participant experience survey, administered by Ipsos-Reid on behalf of the Agency, yielded a number of valuable perspectives from those who had taken part in the substituted process. Appendix 1 to this report contains the entire report submitted by Ipsos-Reid.

The survey of participants focused on evaluating the process and not the outcome of the Board's decision. The survey report takes into account process-related comments, while those comments made specifically regarding the Board's decision were omitted.

(i) General findings

There were two main viewpoints on the success of the substituted process that emerged from the survey. Approximately half of the respondents interviewed were broadly satisfied with the overall process, while the remaining half was to some degree dissatisfied with the process.

Those satisfied with the process were typically professionals for whom environmental assessment processes are a job responsibility. They were familiar with the format, the technicalities, the types of information reviewed, and the decision-making process. Many had staff members and/or legal counsel to assist with their participation. Their satisfaction was chiefly based on the perceived efficiency and timeliness of the substituted process, coupled with their belief that the process did allow an effective forum for meaningful public participation.

Those dissatisfied with the process were often members of the general public, most of whom were somewhat, if not wholly, unfamiliar with the details and workings of this type of tribunal process. They were also, for the most part, people whose participation fell outside the realm of their own professional responsibilities. Their primary issue with the process was the quasi-judicial nature of the proceedings, which let to a perceived imbalance, favouring the hearing towards those participants (including the proponent) who had the resources to employ legal representation.

There was also a concern that the National Energy Board, due to its make-up and mandate, was both more likely to be predisposed to rule in favour of energy development, and also lacked the appropriate skill-set to properly evaluate environmental impact.

Many members of the general public had noted discomfort with the quasi-judicial nature of the NEB hearings. This view was supported by some professional respondents who preferred the NEB process, but noted that this process could be less conducive to public involvement than a review panel under the CEA Act. The Ipsos-Reid report contains suggestions from survey participants on how to minimize the effect of this formality.

An additional conclusion from the participant interviews was that many participants were unaware that the NEB hearing process was being used as a substitute for an environmental assessment process under the CEA Act. Although the Chairperson mentioned at the NEB hearings that they were being substituted for a CEA Act panel review, it appears that this was not understood by all stakeholders. This identifies the need to ensure that all participants are aware when a substituted process is being employed. Participants should understand both the implications of the substituted process and how decisions of the National Energy Board (or any other substituted authority) will be made.

(ii) Pre-hearing communication

The majority of respondents interviewed had a positive view of the efforts made by the National Energy Board to inform residents of Saint John and the pipeline corridor about the environmental assessment process and the public hearing, and to inform people potentially affected by the pipeline that they would have a chance to air their views and concerns. Respondents were also generally satisfied with the information provided at the public information sessions and the pre-hearing planning sessions.

Concerns were raised that information on certain procedural details was not yet available at the public information sessions. Additionally, there were concerns expressed that the pre-hearing planning sessions did not adequately prepare participants to participate effectively in the quasi-judicial hearings.

(iii) Participation

Respondents for whom preparing their submission was a work responsibility, and those whose submissions were relatively simple, agreed that they had both the time and the expertise necessary to prepare an effective submission. By contrast, many participants who were members of the general public felt they lacked both the time and the expertise to prepare a meaningful submission.

Many general public respondents found participation to be challenging because of the quasi-judicial nature of the hearings. Additionally there was a perceived imbalance due to their lack of legal counsel to assist in countering procedural arguments and rulings. This often resulted in restrictions on evidence some participants perceived to be crucial to the assessment of the environmental impacts.

The proponent was seen to have extensive resources including experienced legal counsel. Legal representation of some sort for all participants was suggested as a possible solution to this perceived imbalance.

Respondents generally agreed that the Board was accommodating and flexible, allowing people to participate despite other personal obligations or unforeseen circumstances. However, many respondents to the survey noted concerns that final arguments, which

were initially planned as oral summations, were cancelled due to time constraints. The Board accepted written final arguments, but many respondents felt that this alternative was not as effective to express their views.

(iv) Perceived effectiveness in the process

Respondents to the survey were mixed in their evaluation as to whether the public hearing gave them the opportunity to influence decisions made regarding the Emera Brunswick Pipeline Project. Professionals involved in environmental assessment processes on a regular basis were generally confident that the process worked, and that their input had the potential to influence the Board's decision. Respondents who did not believe that their submission had the potential to influence the outcome centered their objections on the fact that the review panel was made up of oil and gas industry professionals.

There were also those who thought that the process worked well, but perceived a bias on the part of the panel, which in their minds negated its validity. Several respondents held the perception that the hearing outcome was pre-determined, and to some this was evident by information on an alternate route for the pipeline not being heard. As an alternate route was included in the list of issues this was perceived to be prejudicial, and seen to disallow a full discussion on possible compromises.

(v) Comparison of CEA Act and NEB panels

Almost half of the respondents to the participant experience survey were aware that the environmental assessment for the Emera Brunswick Pipeline Project was a substituted process. Those who were aware had two differing views as to the effectiveness of the substituted process as compared to a CEA Act panel review. Some respondents felt the substituted process provided an equally effective but significantly more efficient environmental assessment; and the resource savings inherent in having one stand-alone process were seen to be considerable, although this perspective is not supported by the findings of this report.

Conversely, some respondents believed that the NEB process did not afford the environmental assessment portion of their process enough weight. It was further indicated that the NEB process did not reflect the "spirit and letter" of the CEA Act. The findings of Section 3.1 indicate that the conditions for substitution and requirements of the CEA Act were met. It was also noted by some respondents, who expressed preference for the substituted process that this more formal type of process could be less "conducive to public involvement".

(vi) Expectations and value of participation

Respondents' expectations for the public hearing process were dependant on their type of involvement with the process, and experience with this type of procedure. Some respondents from the general public felt the public hearings did not meet their expectations primarily because they did not believe that their views were considered in a meaningful way.

By contrast, most professionals had their expectations, which were based on previous experience, met. Many professionals also believed that although the process could be

improved in terms of public participation, it did allow for timely and meaningful public input.

Though there were respondents from the general public who believed the process to be so flawed that participation was a "waste of time and effort", the majority of respondents believed their participation was valuable, and most indicated that they would participate in such a process again in the future.

(vii) Participant Funding Program

During the participant experience survey many respondents noted that the Participant Funding Program was valuable, but in their view had three key issues:

- Funding was seen to be inadequate when compared to the seemingly "limitless resources available to the proponent".
- Delivery of approved funding was not coordinated with deadlines set out by the NEB, which meant that participants had to personally finance their research and contracted consultants until the funding was in place.
- Typically, funds received through the Agency's Participant Funding Program are not intended to hire legal counsel. The quasi-judicial nature of the proceedings, however, resulted in legal counsel being a key resource that most participants from the general public lacked. Results of the participant experience survey indicated that many would have chosen to hire legal counsel with the Participant Funding Program assistance.

3.2.4 Federal Departments

Two issues were identified by federal departments.

(i) Aboriginal consultation

Fisheries and Oceans Canada noted that the National Energy Board's consultation approach serves to only consider evidence that is filed by an applicant and any interested parties within the hearing process. After an application is filed with them, the NEB does not engage directly in one-on-one discussions with any interested parties, including Aboriginal groups, outside of the hearing process. The need for direct consultation by the federal Crown with Aboriginal groups is a serious issue for other departments or agencies when they are required to make regulatory decisions relative to NEB-regulated developments that may have an effect on treaty or Aboriginal rights.

The Agency determined it had no role in a substituted process, but the other departments needed to find a means of coordinating Aboriginal engagement to ensure the duties of the Crown were fulfilled. As the National Energy Board does not engage in separate Aboriginal consultation during the hearing process, Environment Canada noted that it would have been helpful for the Agency to have a substantive presence throughout this pilot including observer status at hearings. In the case of any future substituted processes it seems imperative that Aboriginal consultation requirements be coordinated by a federal body.

(ii) Potential improper use of section 25 referral mechanism

Some concern was expressed after the completion of the substituted process about the quick referral of the project to a review panel, pursuant to section 25 of the CEA Act. In this case, the request to the Minister was made with the final goal of using a substituted process, once the assessment was referred to a review panel. Federal departments noted that this could set a precedent of using the section 25 provisions of the CEA Act for its process efficiency features, rather than the intended purpose of the criteria set out in the CEA Act – namely the project may cause significant effects, and public concern. Although in this case public concern warranted referral to a review panel, departments noted concern that the level of public concern required to warrant a referral to a review panel could be diminished if the section 25 provisions are commonly used for process efficiencies to undertake a substituted process.

3.3 Considerations for the Future

3.3.1 Participation in a Quasi-judicial Process

The participant survey report examined the experiences of members of the public, who were registered as intervenors, or had submitted oral or written statements to the quasi-judicial process of the NEB.

A key message resulting from the participant experience survey report was that many members of the general public who were participants expressed concern and were frustrated with the formal, quasi-judicial nature of the NEB hearings. Procedural complexities were seen to favour the proponent, or those with experienced legal counsel. Most public participants did not retain legal services, and thus felt the formal process was inaccessible to them.

Professional respondents, those who participated in the process as a responsibility of their employment, corroborated this view although many noted a preference for the NEB process. Nevertheless, some expressed concern that the substituted process was less conducive to public involvement specifically because of its quasi-judicial nature.

The participant experience survey report contained participant suggestions that there be an allowance for legal aid of some kind for all participants, in order to mitigate the formality of the quasi-judicial process. The report noted this could include the appointment of a public counsel or the provision of funding to hire counsel. While the Agency did administer a Participant Funding Program for the substituted process, it was generally advised that the funding be used to hire technical experts, or commission studies, rather than to hire legal support. This advice is provided by the Agency for most assessments, and is established in the guidance of the funding program.

3.3.2 Formality of Process

The standard NEB process allows for written comments to be received by the Board. These letters of comment are potentially given less weight than evidence sworn under oath and subject to cross-examination during the hearings, as described in the National Energy Board publication The Public Hearing Process. This could potentially occur when

a letter of comment presents evidence contrary to that of other evidence that is sworn and cross-examined.

The inclusion of oral statements in this case was not a unique occurrence for the Board, as the discretion exists to include this in any hearing, as included in their suite of tools available for public hearings.

Swearing-in and cross-examination
Oral statements were given under oath or affirmation, and were subject to cross-examination by any party with intervenor status, typically those of a contrary position. This formality came as a surprise to at least one participant who provided an oral statement. Several other participants also noted that they found the swearing-in to add to their perceived intimidation of the situation.

When an individual had both issued a letter of comment and made an oral statement they were asked to formally adopt their filing at the time they were sworn or affirmed. This was to ensure the letter was prepared under their "direction and control" and was subsequently considered sworn evidence.

Strict timelines
Those giving oral statements were required to register nearly two months prior to commencement of the hearings. None of the participants interviewed for this evaluation indicated great dissatisfaction with the established deadlines.

The Board established rigid timelines for accepting applications to participate through letters or oral statements. Both allowed for a period of 95 days after the hearing order was issued, and 55 days before the hearings began. Applications to make oral statements that were received after the deadline required the Board to consider whether the applicant for the late participation provided a justification for their interest in the application, a rationale for applying late, and whether any other party would be prejudiced by their participation. Based on these criteria, the Board decided whether or not to allow the application and 7 of the 11 late applications were excluded in this manner.

Criteria similar to those considered when accepting or rejecting late applications to make oral statements were taken into account when the Board considered whether to allow late letters of comment. The Board also balanced the accommodation of participant views and the need for an efficient regulatory process.

The NEB noted that letters of comment often contain both unsworn evidence and aspects of final argument. With respect to one late letter of comment, it was noted that while the content of the letter may have been relevant to the issues before the Board, the author did not provide justification for filing the letter of comment late nor did they provide any explanation as to why the letter could not have been provided within the timeframe set out in the hearing order. In addition, no explanation was given as to why the parties to the hearing would not be prejudiced by the late filing. The Board also noted that a letter of objection to the late request had been filed by an intervenor.

Despite the provision for cross-examination of oral statement participants, late applicants for this option were denied permission to present a justification for why the application should be accepted, and an explanation of why parties would not be prejudiced was not presented.

By contrast, CEA Act panel review processes often allow participants to register to speak up to the day of a hearing. Typically, any party who wishes to speak is permitted to do so, without the requirement of applying well in advance. Some respondents to the Ipsos-Reid survey noted their preference with the substituted process, as it limited the number of statements provided by members of the public who "had a problem with everything".

The participant experience survey also included several suggestions by participants to reduce the perceived intimidation of the courtroom-like atmosphere. These suggestions indicate that the participants perceived procedural rulings to favour the proponent, and that participants who were members of the general public were not prepared to participate effectively. In addition, the setup of the hearing room was felt to give the hearings a legal and even adversarial appearance.

3.3.3 Federal Coordination

The substituted process was managed by the National Energy Board, requiring other federal and responsible authorities to comply with the Board's timelines and procedural requirements.

Section 2.2 of this report notes that the NEB provides two participation levels for government departments in their process: Intervenors or Government Participants.

One responsible authority noted that the government participant role eliminates the ability of a government department to cross-examine other intervenors, and reduces the information that was shared, only receiving responses and submissions relevant to that department's key issue. Alternatively, departments who wish to be more involved may choose to participate as intervenors, and are not restricted to the government participant role. However, the determination of the level of participation must occur early in the process and a formal application would be required.

During the participant experience survey it was indicated that a panel review process under the CEA Act provides more flexibility to federal authorities, in terms of the structure and formality of their role, whereas once an application has been filed under the NEB Act any concerns expressed automatically become part of the record.

The government participant category provides less of an opportunity for government departments to participate compared to the intervenor category. The intention of this approach is to streamline information that federal authorities receive, providing only information that specifically relates to their role in the assessment. The role also removes the ability of the federal authority to cross-examine witnesses.

Departments that have participated both as an intervenor and in the government participant role have found that the latter category worked well for their purposes.

Additionally, it was a challenge to coordinate all five responsible authorities in making their determination on the environmental assessment at the time a decision was taken by the NEB and posted on the Canadian Environmental Assessment Registry Internet site. The decision of the responsible authorities, pursuant to section 37(1) of the CEA Act, applies to all responsible authorities and is not only the decision of the National Energy Board.

However, final decisions on recommendations for mitigation and monitoring are controlled by the National Energy Board in a substituted process. Input of other federal authorities and responsible authorities cannot be taken into account in the final decisions made by the Board if this information is not provided specifically during the hearings. The same would however be true for any panel reviews or joint panel reviews under the CEA Act

3.3.4 Panel Composition

It is likely that, had the request for substitution not been made or not accepted, the Emera Brunswick Pipeline Project would have been evaluated by a joint CEAA- NEB review panel, as has occurred in the past for other projects in similar circumstances. In such cases the review panel is usually composed of two members from the National Energy Board, and a third panel member from outside the federal public service, selected by the Minister of the Environment. In turn, the NEB agrees to appoint the third individual as a temporary member of the Board, after a review to ensure there is no conflict of interest. This is done so that all members may hear evidence for the purposes of both Acts.

The substituted process eliminated the requirement for the Minister of the Environment to identify an individual and appoint them as a member of the panel. Additional process time was saved as only existing National Energy Board members were used, eliminating a need to train a temporary member in the mandate and procedures of the Board.

Some participants, however, perceived a bias in the members of the Board. The members of the hearing panel were made up of professionals with significant experience in the industry and some participants felt the environmental assessment was being carried out by a department with a mandate for not only the regulation of pipelines, but also energy development and trade. While the National Energy Board has a mandate for environmental protection, it was felt by some participants that had a member of the panel been appointed by the Minister of the Environment this perceived bias would have been minimized.

4. Summary of Key Considerations and Final Thoughts

4.1 Key Considerations

This evaluation does not include recommendations on future use of substitution. Rather, it identifies the key considerations the Agency, federal authorities, and the Minister of the Environment may wish to examine prior to future use of the substitution provisions of the CEA Act.

(i) Positive views of staff and members of the NEB
Participants surveyed expressed a great deal of satisfaction with the staff of the NEB, especially during the pre-hearing sessions. This indicates that particularly during the less formal phases of the process, participants from the private sector and members of the public found the staff helpful and informative.

(ii) Time savings
The main time savings were achieved through appointing only NEB members to the hearing panel, thus avoiding the need for the Minister of the Environment to identify and appoint additional members, and to train new members on NEB processes. This may have saved as much as one month of process time.

There exist other means to achieve this time savings. There is precedent for cross-appointing panel members, allowing existing NEB members to be CEAA appointees on joint panels, as was done in the case of agreements for the Offshore Petroleum Boards (to which NEB is a signatory). This arrangement would allow for a joint NEB-CEAA secretariat to ensure all CEA Act matters are covered to the Agency's satisfaction. This would, however, still require the Minister of the Environment to approve the panel appointees.

The Environmental Assessment Report noted that the project was quickly referred to a panel review (under section 25 of the CEA Act) and subsequently a substituted process as opposed to undergoing a more extended EA track decision process. This option is available for all potential panel projects, regardless of whether or not a substituted process will be used, and thus any time savings are not necessarily a direct result of the substituted process.

(iii) Process duplication
Administrative and/or process requirements of both the NEB and environmental assessment processes remained in the substituted process. Components that incurred duplication included the creation of both the scope of assessment under the CEA Act and the list of issues under the NEB Act (including consultation periods on both documents), creation of two final reports to meet the requirements of the two Acts, and each Act's requirement for approval from the Governor in Council to be received according to the process described in its own legislation.

(iv) Aboriginal consultation and the duty to consult

For federal departments or agencies that are required to make decisions that may have an effect on treaty or Aboriginal rights and to direct consultation by the federal Crown, with respect to regulatory decisions relative to NEB-regulated developments, is an issue. The federal departments involved in the Emera Brunswick Pipeline review needed to find a means of coordinating Aboriginal engagement to ensure the duties of the Crown were fulfilled. The National Energy Board does not engage in separate Aboriginal consultation during the hearing process, nor can the NEB be deemed to represent the Crown with respect to the duty to consult Aboriginal groups. Therefore, it appears imperative that Aboriginal consultation requirements be coordinated by a designated federal body in any future substitution arrangements.

(v) Public participation

The substituted process was seen as beneficial by environmental assessment professionals, but to some extent inaccessible and complex for members of the general public. The need for legal representation was noted several times in the participant experience survey as a prerequisite for effective participation, and many felt that whether under substitution, or joint panels, support should be made available to aid in process considerations (i.e. legal support). The NEB currently has no participant funding or support mechanism, and cannot engage support for participants once an application has been received.

Participant funding

The Agency awarded a total of $135,900 to six applicants to support their participation in the review of the Emera Brunswick Pipeline Project. In this case, recipients of funding from the Agency were required to be registered as intervenors in the NEB process before being awarded the funding.

Release of funding was not well coordinated with key deadlines of the review process set out by the National Energy Board in the hearing order. In some cases funds were received close to, or after key evidence submission deadlines had passed. As a result, some intervenors were required to file motions with the National Energy Board to permit late submission of their evidence.

The National Energy Board does not currently have a program to provide funding to public participants in its hearing process. If future processes undergo the substitution process provisions should exist for public participants to effectively receive funding to facilitate their participation. The Emera Brunswick Pipeline review experience highlights the need for an NEB participant funding program that is well coordinated when setting deadlines and releasing participant funds.

Deadlines

The strictness of process deadlines also pre-empted some individuals and groups from participating in the process when late applications for oral statements or letters of comment were made. This was perceived as prejudicial to some parties who wished to

participate and felt the strictness contravened the spirit and intent of the provisions for informal public participation as outlined in the CEA Act.

(vi) Participation of federal authorities
Federal departments noted that processes under the CEA Act offer greater flexibility for their participation in an environmental assessment. However, the substituted NEB process did offer federal departments a number of options for their participation, including status as intervenors or in a unique role for government departments.

(vii) Lessons for joint review panels
As noted earlier, the substituted process resembled what a joint review panel may have been, if the substituted process had not been used in this case. For joint review panels, the Agency often adopts the rules of practice that quasi-judicial bodies, such as the NEB, have in place for their hearing processes. However, the results of the participant experience survey indicate that even with a joint review process there could be issues regarding the formality of the proceedings that may need to be addressed in future to better improve public access to the process.

4.2 Final Thoughts

Overall, the pilot was successful and provides a good illustration of what substitution as a tool may accomplish. The criteria and conditions that were initially established for substituting the NEB hearing process for an environmental assessment review panel were met. In general, the principal expectations of the parties to the pilot substituted process were realized, although some insufficiencies were noted, particularly with respect to informal opportunities for public participation. As well, the lack of direct involvement of the Minister of the Environment in the selection of panel members and in the establishment of the panel's terms of reference, created among some participants a perception of bias that cannot be ignored. The pilot was also successful in identifying policy and operational issues that warrant consideration in the context of future use of the substitution provisions of the CEA Act.

Topics for further consideration could include:

- Panel composition and the Minister of the Environment's role in appointing/approving panel members and in approving the panel's terms of reference;

- The need for participant funding and the need for informal, accessible opportunities for public participation;

- The need for Governor in Council approval, under each Act, of the findings of the review (perceived duplication); and

- The adequacy of the mechanisms for meaningful Aboriginal consultation.

An additional issue identified by the pilot is that the substituted process was, from a process standpoint, aside from the appointment of panel members, essentially identical to the process for joint panel reviews conducted by the Agency and the NEB. Since the pilot identified many of the same considerations as those related to joint CEAA-NEB panels, perhaps further analysis should be undertaken to better understand why this is the case. Future consideration could be guided by the following questions:

1. Were the conditions of the pilot sufficient to allow the substitution to reach its full potential?

2. Should/could CEAA-NEB joint panel reviews be conducted in a more informal manner, more in keeping with the overall intent and spirit of the CEA Act?

3. For other types of projects, with more complex environmental issues and important public or Aboriginal concerns, would the differences between a substituted NEB process and a joint CEAA-NEB panel be equally minimal?

4. Should further analysis be done to explore these issues with respect to substitution of other processes (e.g. Canadian Nuclear Safety Commission)?

The next step for the Minister of the Environment and the Agency is to discuss the findings in this report with the federal environmental assessment community and consider its implications on the future use of the substitution provisions of the CEA Act.

It should be noted that whether the review process be a substituted one, or a joint review between two or more federal authorities, the overarching consideration is that the process should be consistent with the purposes of the *Canadian Environmental Assessment Act*. Key among these purposes is that unnecessary duplication is eliminated, and that there are opportunities for timely and meaningful public participation throughout the environmental assessment process.

Appendix 1: Final Report of Ipsos-Reid on Participant Experiences in the Substituted Process for the Environmental Assessment of the Emera Brunswick Pipeline

Ipsos Reid Public Affairs

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Substituted Environmental Assessment: The Emera Brunswick Pipeline

Evaluation
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"Keep it simple, ensure it is meaningful, that people have access, and that people can say their piece. We need to be sanguine about groups that seek to delay the process and it is their interest to not have things happen. In the public interest let's have people see what is going on, test what is being proposed, have their say and let the people who are in place make their decisions... I think the substituted authority should be the way we do this because it is simpler for the general public as people can have their say and question the people with the information." (Intervenor)

"It [the general public] had little or no understanding of either the CEAA Review Panel process or the NEB Regulatory process, and there seems to be no benefit to the public in this Substituted EA Process because the members of an NEB Hearing Panel are all full-time employees of the NEB and seem by definition to be inclined to put more weight on energy development than on the best possible environmental protection. Therefore a case could be made that the proven CEAA Review Panel process should be used in future hearings." (Intervenor)

SECTION I – EXECUTIVE SUMMARY

Executive Summary

Background, Research and Evaluation Objectives

The overall objective for this evaluation was the examination of the substituted process that took place for the Emera Brunswick Pipeline, with findings to be used to inform the Minister in future consideration of whether, when and how to use his or her discretion under the substitute provisions of the Canadian Environmental Assessment Act.

The Canadian Environment Assessment Act requires a federal authority (e.g. a Cabinet Minister or federal department or agency) to ensure the conduct of an environmental assessment of a project where:

- The federal authority is the proponent of the project;
- The federal authority provides certain forms of financial assistance to the proponent of the project, enabling it to be carried out in whole or in part;
- The federal authority sells, leases or otherwise disposes of federal lands or interests in them, or transfers controls of those lands or interests to a province;
- The federal authority issues any type of permit or license or grants any approval for the project to be carried out in whole or in part.

The Act provides for four tracks with the environmental assessment process, one of which is panel review. A panel review is conducted by a group of experts who are selected on the basis of their knowledge and expertise and appointed by the Minister of the Environment. The review has a number of requirements, including ensuring that information required for the assessment is obtained and made available to the public, holding meetings that offer the public an opportunity to participate in the assessment, preparing a report on the review including any conclusions, recommendations or comments from the public and any follow-up to the review. A report is then submitted to the Minister and the responsible authority.

The Minister of the Environment also has the discretionary power to approve the *substitution* of another review process used for assessing the environmental effects of a project. This power of substitution was used for the first time in 2006, when the National Energy Board (NEB) requested that the Minister of the Environment refer the assessment of a proposed project to construct a 145 kilometre pipeline in Saint John, New Brunswick (Emera Brunswick Pipeline) to a review panel, and that the NEB should conduct the review panel process. This request was approved in May 2006, and the project chosen to undergo substitution in order to allow the federal authorities involved and the Canadian Environmental Assessment Agency to test the substitution process on a pilot basis.

This research evaluates the success of the substituted process through the examination of the opinions of actual participants in the Emera Brunswick Pipeline substituted process. The primary objective for the evaluation is to generate answers to the following questions:

- What were the principal expectations in respect of the Substituted Process; were these expectations realized; if so, what key factors contributed to this success; if not, what key factors contributed to the situation?
- How did the Substituted Process affect public/stakeholder participation?
- What is the degree of stakeholder satisfaction (public, government, Aboriginals, other participants) with the Substituted Process?

Main Findings

There were two main viewpoints on the success of the substituted process that emerged from this research: approximately half of the respondents interviewed were broadly satisfied with the overall process, while the remaining half were to some degree dissatisfied with the process.

Those satisfied with the process tended to come from within the ranks of professionals for whom environmental assessment processes are a job responsibility. They were familiar with the format, the technicalities, the types of information reviewed, and the decision-making process. Many of them had staff members and/or legal counsel to assist them with the tasks necessitated by participation. Their satisfaction was chiefly based on the efficiency and timeliness of the substituted process, coupled with their belief that the process did allow an effective forum for meaningful public participation.

Those dissatisfied with the process tended to come from within the ranks of the general public, most of whom were somewhat, if not wholly, unfamiliar with the details and workings of this type of tribunal process. They were also, for the most part, people whose participation fell outside the realm of their own professional responsibilities. Their primary issue with the process was what was often referred to as the "quasi-judicial" nature of the proceedings; this was perceived to balance the hearing in favour of those participants (including the proponent) who had the resources to employ legal representation. There was also a concern that the National Energy Board, due to its make-up and mandate, was both more likely to be predisposed to rule in favour of energy development, and also lacked the appropriate skill-set to properly evaluate environmental impact.

It is important to note that this is an evaluation of process and is not tied to outcome, although respondents who were dissatisfied with the process also tended to be those who disagreed with the proponent's intent (and indeed, this encompassed most members of the general public who participated). Only those objections to the process focused on specific procedural details have therefore been reported here.

Pre-Hearing Communication

The majority of respondents interviewed had a positive view of the efforts made by the National Energy Board to inform residents of Saint John and the pipeline corridor about the environmental assessment process and the public hearing, and to inform people potentially affected by the pipeline that they would have a chance to air their views and concerns. Respondents were also generally satisfied with the information provided at the public information sessions and the pre-hearing planning sessions, though there was some concern that information on certain procedural details was not yet available at those meetings. There was also concern expressed that the pre-hearing planning sessions did not adequately prepare participants to participate effectively in what was later perceived to be a "quasi-judicial" hearing. The application process was generally well received, though government representatives did note that the government participant category as it was conceived for this hearing did not fully meet their participation requirements, for example affording fewer process privileges such as receiving all evidence-related documentation, and the ability to cross-examine. Furthermore, although the Canadian Environmental Assessment Agency funding program was welcomed, there were issues raised surrounding timelines and restrictions on funding utilization.

Participation

Respondents for whom preparing their submission was a work responsibility, and those whose submissions were relatively simple, agreed that they had both the time and the expertise necessary to prepare an effective submission. By contrast, many participants who were members of the general public felt they lacked both the time and the expertise to prepare a meaningful submission. As noted, many general public respondents did find participation challenging because of the "quasi-judicial" nature of the hearings; there was a perceived imbalance inherent in their lack of legal counsel to assist in countering procedural rulings and this often, in their minds, restricted evidence crucial to investigating environmental impact. As the proponent was seen to have almost unlimited resources including very experienced legal counsel, legal representation of some sort for all participants was seen to be one possible solution to the perceived imbalance. As to the logistics related to participation, respondents generally agreed that the Board was accommodating and flexible, allowing people to participate despite other obligations or unforeseen personal circumstances. The main issue raised on logistics was the necessity to cancel oral summations and there was concern expressed that the written alternative was not nearly as effective.

Perceived Validity of the Process

Respondents were mixed in their evaluation as to whether the public hearing gave them the opportunity to influence decisions made regarding the Emera Brunswick Pipeline. Professionals involved in environmental assessment processes on a regular basis were generally both confident that the process worked, and that their input had the potential to influence the Board's decision. Respondents who did not believe that their submission had the potential to influence the outcome centered their objections on the fact that the review panel was made up of oil and gas industry professionals. There were also those who thought that the "process" worked well, but that perceived bias on the part of the panel negated its validity. Key to several respondents' perceptions that the hearing outcome was "pre-determined" was their concern that evidence related to an alternate route for the pipeline was not heard. As an alternate routing was included in the list of issues this was perceived to be prejudicial, and seen to disallow a full discussion on possible compromises.

The Substituted Process: Evaluation and Comparison as an Environmental Assessment Tool

About half of the respondents interviewed were aware that the environmental assessment for the Emera Brunswick Pipeline was a substituted process. Those who were aware had two differing views as to the effectiveness of the substituted process as compared to a CEAA panel review. Some respondents felt the substituted process provided an equally effective but significantly more efficient environmental assessment; the resource savings inherent in having one stand-alone process were seen to be considerable. Conversely, there were respondents who believed that the NEB process did not afford the environmental assessment portion of their process enough weight, and that the NEB process did not reflect the "spirit and letter" of the Canadian Environmental Assessment Act. It was also noted by some respondents who expressed preference for the substituted process because of its efficiency that this more formal type of process could be less "conducive to public involvement".

Expectations and Value of Participation

Respondents' expectations for the public hearing process for the Emera Brunswick Pipeline were very much dependant on their type of involvement with the process, and their experience with this type of procedure. Some respondents that came from within the ranks of the general public felt that the public hearings did not meet their expectations primarily because they did not believe that their views were considered in a meaningful way. By contrast, most professionals had their expectations met; these expectations would have been based on previous experience, and so would reasonably reflect what they actually knew would take place. Many of professionals also believed that although the process could be improved in terms of public participation, it did allow for timely and meaningful public input. Though there were respondents from the general public who believed the process to be so flawed that participation was a "waste of time and

effort", the majority of respondents believed their participation was valuable, and most indicated that they would participate in such a process again in the future.

Conclusions and Implications

The following considerations are presented as a synopsis of the key changes suggested by participants that they felt would improve future substituted processes:

1. A first key message is the need to address the discomfort that many members of the general public expressed with the "quasi-judicial" nature of the NEB hearings; a view corroborated by some professional respondents who actually preferred the NEB process, but who expressed concern that this process could be less conducive to public involvement specifically because of its "quasi-judicial" nature.

2. There are many courses of action that might be considered to reduce the perceived intimidation of the courtroom-like atmosphere; these include changes to the set-up of the actual hearing room and increased availability of training for participants to prepare them to effectively participate.

3. A second consideration is addressing the perception among some participants that the environmental assessment portion of an NEB or any other substituted process is not seen to be as robust as a CEAA review panel process.

4. A final conclusion arising from the interviews is the need to increase efforts to ensure that all participants are aware when a substituted process is being employed, and to make sure participants understand both the implications of the substituted process and how decisions of the National Energy Board (or any other substituted authority) are going to be made. Participants should also be made aware of how decisions are made under the Canadian Environmental Assessment Act.

SECTION II – RESEARCH METHODOLOGY

Methodology

A qualitative approach consisting of a series of 35 in-depth interviews with process participants, each lasting about 30-minutes, was taken to evaluate the perceived success of the Emera Brunswick Pipeline substituted process. This qualitative approach allowed the issues to be covered in greater detail than a quantitative questionnaire and was better suited to the complex questions covered by this evaluation. 'Open-ended' type questions such as why participants felt a certain way about the process, what their expectations were, and how the process could be improved in future provided a rich base of opinions from which to draw informed conclusions on the process from the perspective of participants.

Sixty-one of the approximately 300 participants available as sample were contacted to obtain the 35-interviews required. This response rate allowed for maximum realization of a sample management strategy designed to ensure that a wide range of all types of participants were interviewed. The achieved sample of respondents represented all categories of participation: intervenors, oral statement givers, and letter of comment writers. Participants representing a range of sectors including:

- Government;
- Oil and gas companies; and
- Community groups

were also successfully included among the interviews. Individuals not affiliated with any larger group were also targeted, and a conscious effort was made to incorporate reasonable demographic differentials into the final list of participants who were interviewed.

Key to the relevance of this research was the focus on the process itself as opposed to the outcome; this focus was achieved through careful construction of an interview guide emphasizing process-related detail, and by ensuring interviewers were well-briefed on the nuances of the file in order that they could guide respondents to specifically comment on process.

Telephone interviews with respondents were carried out from February 15, 2008 through March 25, 2008. Appointments for interviews were scheduled and carried out by executive interviewers who have comprehensive experience in conducting elite and/or sensitive interviews. Potential candidates were contacted, given a brief description of the project, asked if they would be available to complete an interview, and assured that their responses would remain completely confidential and would only be reported in combination with others.

One closed-ended question was added to the qualitative moderator guide to give basic indicative findings on the proportion of respondents satisfied with the process. We would caution that these findings need to be used with considerable care given the small sample size, and do not represent a statistically reliable quantitative analysis of that question. It is worth briefly detailing here how qualitative data are analyzed. Qualitative data from the in-depth interviews are reviewed by researchers who draw out continuities and synthesize the main themes, critical "hot buttons," and "typical" responses. The analysis of qualitative

findings yields rich insights and indications of how the target audience perceives the study issues. However, the results of the interviews are not, again, statistically representative of the sample universe of process participants, nor can they be generalized to the population at large.

Survey Respondent Overview

It was important to take a strategic approach to managing the respondent sample in order to maximize the range and depth of the information and opinions collected, and to ensure findings were relevant to the research objectives. Respondents had to encompass a wide range of "types" of participants who took part in the process to provide a comprehensive analysis of the success of the substituted process from the perspective of participants, without overemphasizing the views of any one particular group.

Ipsos-Reid was successful in targeting and capturing interviews with the following:

1. Participants with differing levels of participation: intervenors, oral statement presenters, and those who submitted a letter of comment.[1]

2. Participants who have taken part in previous non-substituted processes, as well as participants for whom the Emera Brunswick Pipeline process was a first experience. In this way, opinions and insights were captured from participants in a position to compare processes, as well as from those participants who had never taken part in this type of process before.

3. Participants who fell into each of the categories in the proponent's engagement activities, including groups and/or individuals who could be targeted for stakeholder consultation, aboriginal consultation, regulatory consultation and public consultation.

The final sample list supplied to Ipsos Reid included 20 oral statement presenters (two of these submitted a letter of comment as well), 177 participants who submitted a letter of comment (including the two previously noted) and 73 intervenors. In the end, the following break-down of participant types was achieved:

- 5 Oral statement presenters
- 9 Letter of comment submitters
- 21 Intervenors

TOTAL 35 Completed Interviews

[1] A letter of comment could be submitted if a respondent wanted to share their views on the project but not formally participate in a hearing. An oral statement allowed limited participation in the hearing but not active participation in the cross-examination process. An intervenor formally participated in the hearing: intervenors could present evidence, question other witnesses and give final arguments during the written and oral portions of the hearing. Intervenors could also be questioned on any evidence they presented.

Another category of participation was available to participants: government participant. However, no participants in the public hearing process for the Emera Brunswick Pipeline chose to participate under this category.

SECTION III – FINDINGS BY CATEGORY

This section presents detailed findings under each of the interview guide sections, with a focus on identifying the key messages that have emerged from the research, and on extricating specific observations and opinions that could form the basis for future consideration of whether, when and how the Minister might use his or her discretion under the substitute provisions of the Canadian Environmental Assessment Act. As well, those observations and opinions that point to specific changes that respondents believe might enhance the process will be identified.

Two distinct schools of thought emerged as the interviews were conducted. Though opinions overlapped on many procedural details, respondents could generally be categorized to fall into one of two camps: those who believe the substituted process is more efficient than other processes and allows for a reasonable level of public input; and those who believe the process was overly-intimidating because of its "quasi-judicial" nature, and offered limited opportunity for influencing the final decision.

As noted, there were varying degrees of overlap between these two primary groups. For example, even those with the strongest objections to the process as a whole were generally satisfied with the pre-hearing public relations effort, and with the efficiency of NEB staff.

General Impressions

> "Given the process that exists I would say I was satisfied – though I see room for improvement. It was very legalistic as compared to another type of panel review."
> (Intervenor)

In order to identify respondents' underlying general impressions of the process, the 35 respondents were asked to rate their "overall impressions of the public hearing process
for the Emera Brunswick Pipeline". Respondents were reminded that they were evaluating the process, not the outcome. A total of 18 respondents stated they were satisfied, while 17 responded that they were not satisfied. (Again, we would caution that these findings need to be used with considerable care given the small sample size, and do not represent a statistically reliable quantitative analysis of that question.)

The fact that the research achieved a balance of those who were "satisfied" with the process, and those who were "not satisfied" with the process is likely attributable to the fact that researchers endeavoured to capture a similar number of professionals whose work encompasses Environmental Assessments (EAs) at least somewhat regularly, and the general public. When one delves into the background of those who were "satisfied" with the process, many of them were those professionals for whom environmental assessments and public tribunals are a part and parcel of their jobs. Participants for whom this was the first such process they had participated in were more likely to be dissatisfied, and often noted that they found the process intimidating and overly "quasi-judicial".

Generally, those who were satisfied with the process did feel that it offered stakeholders and the public the opportunity to present their views to the NEB, and

to have them considered in a meaningful way. The fact that the NEB has a separate project review process which includes a review of the environmental impacts, and could potentially be substituted for a CEAA Panel review was often mentioned as a positive aspect of the substitution because of time and resource savings realized. Many of those satisfied with the process were also pleased with the structured timelines set forth in the NEB process; there were several references to the challenges inherent in planning and/or regulating large projects for which no definitive decision date on approvals is set. There were also members of the general public whose submissions focused on their concerns about the pipeline route who, though not necessarily happy with the outcome, were nevertheless satisfied with the process itself.

"Well, I think that as a not-for-profit organization we had the opportunity to get our view across. We were given the time and people asked questions of us so we felt our views were made apparent to the NEB Board and to the citizens at large." (Oral Statement)

"In the sense that everyone had their say. Everybody had an opportunity to express their views and I felt it was very transparent." (Letter of Comment)

"All very good – nothing could have been done better. It was well organized and everyone who had submitted an intervention had the opportunity to get up and speak." (Intervenor)

"I think that there were obviously a lot of people in the hearing room that had passionate views and the process allowed them to be heard. Everybody gets to have their say." (Intervenor)

"I guess the process is very formal so it is very clear as to what the steps are and that allows us to schedule and plan around that." (Intervenor)

"The thing that I liked – one of the many things I like about the NEB process – is that there is a date certain. For example – they map out the whole process and provide a series of dates which is very clear." (Intervenor)

For those who were "dissatisfied" with the process, there were three prevalent concerns: the process was seen as being imbalanced because of the greater resources perceived to be available to the proponent, the hearings were seen as being overly quasi-judicial and therefore intimidating and even daunting to the general public, and the National Energy Board was seen to be predisposed to ruling in favour of the energy industry – and the Emera Brunswick Pipeline - because of its mandate and make-up.

"The thing that struck me with the most impact was that you had the companies involved with high-priced lawyers and a whole section of them and we felt intimidated because we had no lawyer and not a lot of finances." (Oral Statement)

"...in terms of personally – incredibly intimidating. I have never had experience in this framework and talking to people who have sat on these boards it is calculated

to be intimidating. When they walk in to their raised dais everyone rises – it is quasi-judicial. It succeeded in its design to be intimidating. After the intimidation factor the imbalance factor – you had community members on the right hand side and you looked to the left were the suits and these were … on one side you had grandmothers and grandfathers and people who are just people as opposed to lawyers and staff people. My staff people was me." (Intervenor)

"The process culminated in the hearing which would have been difficult for anybody but litigation lawyers. It was formal, judicial and adversarial. The procedure was not quasi-judicial, it was the equivalent of a court case…" (Intervenor)

"The main shortcoming was that there was no money for a lawyer. And our money was late and our experts were not allowed to talk or were cut off while the companies had high-priced lawyers and a whole slew of experts. It was a David and Goliath situation and it would have been a difficult case for us to have won under those circumstances." (Intervenor)

"I think it comes down to a fundamental issue of imbalance…They refuied things with legalities and we could not respond in kind. Thousands of pages of evidence and I am supposed to be aware of the bits that pertain to me and points of order?" (Intervenor)

"Shouldn't the Board be made up of people who had no stake in the industry – the Board members seemed to me to be naturally pro-energy production. It seems it was in their mandate…My gut feeling is why have someone from this industry deciding this issue – it should be people who don't have a stake in it." (Intervenor)

Interestingly, when probed, some of the respondents in the "satisfied" category noted that although they themselves were satisfied with the process, they also felt that the process was overly intimidating for the general public:

"The NEB process – I thought it was very difficult for the public to participate; they didn't have lawyers. They couldn't use their funding for legal representation and they were way outside their comfort zone. They had to participate in a very legalistic process where the lawyers for the proponent could object to their questions and it was challenging for them." (Intervenor)

"It was a very formal process and we have made submissions to standing committees and such in the past but even for us it was a little intimidating and for the average citizen I think it would have been a little daunting. But it was respectful and well done." (Oral Statement)

The table below outlining respondents rating of their "overall impressions of the public hearing process for the Emera Brunswick Pipeline" in terms of their satisfaction with the process is included here as a reference rather than to give any indication of quantitative findings with statistical reliability.

Type of Respondent	Very Satisfied	Satisfied	Somewhat Satisfied	Not Very Satisfied	Not at all Satisfied
Intervenor	7	2	2	6	4
LOC	1	1	2	3	3
OS	2		1	1	
Total	10	3	5	10	7
Category Totals	18 Satisfied			17 Not Satisfied	

Pre-Hearing Communication

Public Relations Outreach

> *"I knew professionally but it was on the radio and in the newspaper quite a bit. It was a heated topic so it was always in the news and they gave lots of notice for the meetings so anyone who had any interest would have known about it."* (Intervenor)

The majority of respondents interviewed had a generally positive view about the efforts made by the National Energy Board to inform residents of Saint John and the pipeline corridor about the environmental assessment process and the public hearing, and to inform people potentially affected by the pipeline that they would have a chance to air their views and concerns. Many respondents could not pinpoint how they first heard about the hearing, but they themselves attributed this to the fact that notification would have taken place almost two years before they were interviewed.[2]

"Yes I do [think they did a good job of informing the public]. It was encouraged. In that regard they were fair. Can't find fault." (Intervenor)

"Most everybody knew it was happening." (Intervenor)

"It was all good – they did a lot of work to make sure people knew." (Letter of Comment)

"Emphatically, yes, and there is so much information and people don't read it. They had public information sessions; this was an extraordinary amount of consultation and they wanted to be community friendly…." (Intervenor)

There were some suggestions as to how the public information outreach could have been improved, though, again, the majority of respondents were satisfied with the outreach as it was. Some of the suggestions of note included a flyer insert in the local newspaper with more detailed information than that carried in the advertisement, notices and information kiosks at shopping centres, more effective use of the Internet through e-mail messaging routed through stakeholder groups as well as notification on City of Saint John and other relevant websites, and brochure mail drops to large areas. Several respondents noted that the newspaper advertisements were placed in newspapers owned by the "Irvings", a corporation perceived to be closely aligned with the proponent, and that many citizens of Saint John choose not to read those publications because of their ownership. One intervenor asked, "*If you put an ad in the paper that no one reads is that advertising?*" Suggestions to overcome this particular issue included the

[2] The Emera Brunswick Pipeline public hearing process took place in 2006, with public notification taking place prior to and during the public information and pre-hearing planning sessions held on April 5, June 5, June 19, and June 20, 2006. (A session for registered participants was held October 12, 2006.) The hearing commenced on November 6, 2006.

inclusion of a wide range of media outlets in the public relations outreach campaign.

Public Information Sessions and Pre-Hearing Planning Sessions

> *"I thought so [that we got the information needed at the pre-hearing meetings], and we got a good chance to ask questions and such but people were attacking people trying to make the presentations. But the NEB staff did a good job I would have rated them a '10'. They were fair."* (Intervenor)

About half of the respondents interviewed remembered attending either a public information session, a pre-planning session or, in some cases, one of each. Because the meetings were held almost two years prior to the interviews being conducted, there was some confusion among respondents as to which type of meeting they attended, and certainly as to the date of the meeting or meetings attended. Furthermore, there were respondents who believed they had attended an NEB public information session, but when details of the meeting were explored, it was found that they had actually attended a meeting organized by a local community group. A tally of results show that approximately 16 respondents attended a public information session, and about 15 respondents attended one of the pre-hearing planning sessions. Certainly enough of the respondents attended to warrant examination of their views on the quality of the meetings.

Overall, reactions to the information provided at the public information sessions and the pre-hearing planning meetings were positive, with the majority of respondents stating that they were informative and also provided a good forum to ask questions.

"They had four or five meetings which seemed like they really wanted to make sure the public was aware of what was going on. The more information they put on the table I think the more positive that the citizens became. They did a good job." (Intervenor)

"There was no short-changing anybody. I saw them talking to people and everyone got the information and the attention they needed." (Letter of Comment)

"I didn't ask questions myself but there were people asking questions and they were really good." (Letter of Comment)

"I went to one [of the sessions] and I thought they were set up great and everything went really well. Locations were good. They held them in the city centre they were accessible. There weren't any restrictions to attending." (Letter of Comment)

There were some concerns about information that was not yet available at the time of the meetings. For example, one respondent felt that NEB staff could not answer questions as to what types of decisions the NEB could make in regard to the pipeline. At the meeting, she was told that information was not available at that point. Her suggestion was to have staff respond to such questions in a way that outlined the typical types of decisions that the NEB had made in the past if the information was not yet available. Another respondent felt that NEB staff should have been available after the meetings to allow respondents to direct questions to them without needing to ask these in a public forum. Some respondents did allude to the fact that this option was in place; taking more steps to ensure attendees understand that they could speak to staff after the meetings in an informal way would likely resolve this issue.

"When the NEB came to their first meetings there were times that they couldn't give you a whole lot of information and I went to two or three of those and I was fine but from a stakeholder perspective they were somewhat frustrated that they weren't given more detail. The NEB people often answered that the information wasn't available and only would be after the application was filed – I think more detailed information could have been in place." (Intervenor)

"There could have been more detail on the process at those meetings. It would have been helpful if they had gotten down to the steps and to what decisions the NEB could make and often they said we can't speak to that as of yet. But perhaps they could have approached it by saying, 'Typically it could happen like this…', or 'This could happen…'." (Intervenor)

"Yes [I got the information I needed] and generally they did try to help people but they didn't go beyond to make it more user-friendly …there were three main members of the board [referring to the NEB staff at pre-hearing planning sessions] but they had a staff with them as well. I feel they could have said, 'so- and-so is going to sit over there so you can go talk to her'." (Oral Statement)

Perhaps the most significant information lapse noted by respondents was the degree to which they had been forewarned that the actual hearings were going to be quasi-judicial in nature. Several noted that this should have been presented much more clearly. There was a feeling that the pre-hearing planning sessions, specifically, did not adequately prepare respondents for their actual experience in the hearing room.

"Yes [I got the information that I wanted] but the problem was you don't know what information you need – you don't know the whole process." (Intervenor)

"It was a huge learning curve on how the process worked. I don't think anyone could be prepared for that – the NEB did run some sessions to help you to become an intervenor but they didn't give you any clue at all at what kind of an ordeal it could be." (Intervenor)

"It might be incumbent upon the CEAA to make people more aware that when there are full panel reviews that everybody knows what is in the Act, that they can get funding, and how to make themselves more prepared." (Intervenor)

"If they are going to go with this substituted process they need to run workshops – role playing perhaps – not just an information session. They have to go into a lot more detail about how to get prepared for this type of process." (Intervenor)

NEB STAFF WIN KUDOS FROM PARTICIPANTS

Those respondents who interacted with NEB staff members, whether in person at the meetings and hearings, by telephone, or by e-mail, were almost unanimous in praising those staff members for their efficiency and their congeniality. NEB staff members were described as being friendly, professional, and accommodating. It is interesting to note that there were respondents who took issue with almost every aspect of the process, yet still praised the NEB staff for their helpfulness and efficiency.

"Yes. They [NEB staff] were great." (Intervenor)

"I talked to one gentleman about the route itself – the person with the maps – and mentioned a couple of concerns about entrances and security and he was helpful and answered me very well." (Intervenor)

"The only exchange I had with NEB staff was that I didn't know I needed to file my evidence… they were very efficient. The staff were great." (Intervenor)

"Yeah, I called someone before [the hearing] because I was concerned about getting my papers in and they were very helpful and assured us to call if we needed any help they said they would always be there to assist us. They were good that way." (Oral

Applying to Participate

For the majority of respondents, the process of actually applying to participate in the public hearing process was relatively uncomplicated, and most felt that they had adequate time to prepare their application. Respondents generally agreed that the required forms and documents were readily accessible, and that NEB staff were available to assist when needed. Several respondents also noted that the NEB website was both comprehensive and easy to navigate. For the most part, when asked whether they had enough time to apply to participate, respondents simply answered "yes."

"No problem. And you know because we are governed by a board we have to know in advance as there are steps we have to go through because we have to go through the board and then set up a volunteer committee and formulate a response and the have the board approve that – so time is very important." (Oral Statement)

"It's very good – the NEB has a great website and they send regular updates so that was very good." (Intervenor)

There were a few concerns expressed about the timing of the application process, and some concern expressed that the application process was somewhat daunting for the general public, but, again, the majority of respondents were comfortable with this part of the process. It is worth noting here that the study was limited to actual participants in the process as this was the sample provided for the evaluation by the CEAA; no sample was available for those who did not apply to take part. While it would have been of considerable relevance to the evaluation to attempt to interview those who did not apply because of perceived barriers of time or complexity, this was not possible.

"I had to apply online and I made several phone calls to the NEB – it WAS under the gun because I didn't even realize that the deadline was very quickly after our meeting and I think if it hadn't been for our own little meeting and people having more time to look at all the regulations and so on I probably would have missed it. And I did know a couple of people who didn't apply because of that." (Oral Statement)

"We were pushed and a lot of our folks were just ordinary people and we had to assist and help them fill things out. Some have limited schooling and the terminology was very scientific and it caused problems." (Intervenor)

As to suggestions to make the application process better, timeline constraints did receive several mentions, and specific references were made to the fact that these timelines were more challenging for the general public than for those for whom the process was part of their job responsibility. For many of the professionals involved in the process, completing the application process consisted of a phone call or an

e-mail to either their designated staff member or their legal counsel to state when the application was due.

"Timeline is the big thing." (Intervenor)

"I think maybe scheduling more lead time but that would go back to the company's decision on when to do it. What might be easy for bureaucrats is not easy for the guy on the street." (Intervenor)

"Yes. That is a quick call to our lawyer for us [directing them to] send in the intervention letter. It's a form letter." (Intervenor)

Participant Categories

> *"The government participant role as it was written for this process now – you would lose the ability to cross-examine, and the information that was shared would be reduced – you'd only get responses and submissions relevant to your own submission."*

There was one particular concern expressed about participant categories that is worthy of note, though this applies only to a small number of participants. There were four possible categories for participation for the Emera Brunswick Pipeline substituted process: intervenor, letter of comment, oral statement, or government participant. Fisheries and Oceans Canada, Health Canada, and Natural Resources Canada chose to participate as a government participant, although none were included in the sample universe utilized for this research. The responses, below, which relate to the government participant role, were expressed by those government organizations that participated as intervenors, and were therefore available as potential respondents because all intervenors were included in the sample.

Some government respondents felt that with a CEAA process there is more room for open exchange among regulatory authorities (or government participants); with the NEB process the perception was that once an application has been filed any concerns expressed automatically became part of the record, and do not allow for negotiation and dialogue among the regulatory authorities. There were concerns that the government participant category afforded government participants fewer process privileges than the intervenor category, including receiving all evidence-related documentation, and the ability to cross-examine. Suggestions for improvement centered around re-writing the government participant category to address these issues.

Since the Emera Brunswick Pipeline process, one respondent has participated in other EAs as a government participant and has since found the category worked well for their purposes, but they did not choose that category for the Emera Brunswick Pipeline hearings specifically as in that case they felt it would constrict their participation. There were not enough government respondents available in the sample for this research to draw any firm conclusions on this issue, and no government departments which choose the government participant category were

interviewed. However, those government intervenors who were interviewed had definite views on the government participant role which merit reporting here.

"Once hearing orders are issued everything is provided in writing and is issued to other intervenors – even a simple question can't be answered without it being a formal request." (Intervenor)

"We do a lot with CEAA and harmonize those reviews and there is no regulatory restriction but with this process there was this restriction and that was new to us and we had to adapt. If it has not been substituted, if had been a CEAA panel – it would have had our normal free flow of information in terms of harmonizing the RAs but under this process it was a little more restrictive." (Intervenor)

"We had a lot of discussion about that within the region and with our headquarters and because it was the first substituted process and because at that point the government participant was a new role and no one had any experience with that - we decided that being an intervenor would give us more flexibility as the process moved forward. We had more discretion with intervenor status." (Intervenor)

"They were helpful when they could speak but after the hearing order was issued even if we had an informal question it was difficult to get an answer. The staff was limited in their ability to answer questions…[such as?]…relating to government participant role, for instance, we couldn't get a clear answer on what the difference was between a government participant and an intervenor. So we decided to be an intervenor." (Intervenor)

Funding

CEAA's Participant Funding Program was seen to have three major flaws from the perspective of many respondents, though there were certainly those who welcomed it and believed it to be a good program. Firstly, CEAA funding was seen to be inadequate when compared to the seemingly "limitless resources available to the proponent". Furthermore, delivery of approved funding was extremely late in the process, which meant that participants who were members of the general public had to personally finance their research and contracted consultants until the funding was in place. Finally, funding was not, as many participants understood it, to be utilized to hire legal counsel. Because of the quasi-judicial nature of the proceedings legal counsel was seen to be the key resource that participants from the general public lacked; indeed, many would have chosen to hire legal counsel with CEAA funds.

"The timelines were all very tight and that was another big problem, especially with the funding being delivered so late there was no time for hiring consultants." (Intervenor)

"It took a long time to get the cheque and we didn't have any money and nobody felt like taking a risk (personally) in the event we didn't get the cheque." (Intervenor)

"It wasn't bad at all [the funding process] but for us it came too late so we were worried because we put our own money out so it was difficult." (Intervenor)

"We didn't know prior [there was funding available]. We want to keep independent anyway. But you know it shouldn't cost people money to take part in this." (Intervenor)

"You really need somebody who has been though it before and knows the ropes and maybe even a lawyer. And you need technical people to really go up against a proponent. To be on an even playing field (with the proponent) you would need millions of dollars to prepare and submit." (Intervenor)

"Yes, but we just didn't have enough money to hire a lawyer. We were given a grant but told that we couldn't use it for legal counsel…[it] is not fair these companies have millions of dollars at their disposal and they had more lawyers there than you could shake a stick at and so right away it is one-sided." (Oral Statement)

Participation

Preparing the submission

> *"I think expertise is a big problem. My wife and I prepared our own submission and Friends of Rockwood Park prepared another one and the Friends got some money but it was a daunting task to go through this application with all the technical information and respond to it."* (Intervenor)

Many respondents agreed that they had both the time and the expertise necessary to prepare their submission, but those who fell into this category were generally drawn from two specific groups of respondents: professionals for whom this type of submission preparation is a work responsibility, and those whose submissions were relatively simple (many letter of comment writers) or specific to only one aspect of the pipeline project. For those intervenors endeavouring to prepare a submission that would, in their estimation, adequately address their concerns in a manner that would be impactful within the framework of such a formal process, there was neither the time nor the expertise available to them to complete their submission. As one intervenor noted, "The proponent had a couple of years on us."

"I love writing so I actually enjoyed doing the research online about this. I took my weekends and evenings and did it. " (Oral Statement)

"I certainly did [have enough time]. During the course of the hearing I heard people say they didn't have enough time to read all the material and analyze it and what have you and that was true unless you have significant resources at hand. In this instance we did most of our analysis internally because we had a fairly narrow scope in terms of our concerns." (Intervenor)

"There is a fundamental difference in the timeliness issue in that it is not my job. There is nobody that does the research on the public interest. On top of my job, my other obligations, etc., I had to do this – but if I was a land assessor that is billable hours for them. They weren't billable at my house." (Intervenor)

"I had enough time but I certainly didn't have enough expertise." (Oral Statement)

"Give me a writer (laughing)." (Letter of Comment)

"This was measured in months yet the proponent had worked on this for years and they had millions of dollars they spent on teams of people writing all this stuff." (Intervenor)

The majority of respondents agreed that the process worked well in regards to the availability of relevant information and documentation. During this part of the process, respondents were once again very pleased with the level of assistance that the NEB staff offered them.

In the Hearing Room

> *"Under the NEB process one suggestion would be if an intervenor registered and put together a submission but was not comfortable presenting maybe the NEB could have an ombudsman to speak on behalf of intervenors...might take out the formalness and the intimidation factor of a quasi-judicial process and make people more comfortable." (Intervenor)*

One of the key concerns that participants expressed about the substituted process was the challenges that the "quasi-judicial" nature of the hearings presented to members of the general public; a factor acknowledged by a number of the professionals who were both familiar and comfortable with the proceedings. Many participants referenced examples of what they perceived to be an imbalance between the proponent and participants who were presenting against the proposed pipeline which they believed directly affected the potential effectiveness of their participation; that perception of imbalance was primarily driven by the ability of the proponent's legal counsel to use procedural rulings to favour the proponent's desire to have some evidence excluded, in the opinion of many respondents. Therefore, though many respondents did state that they were comfortable participating in the hearings, they did not feel that their comfort level was relevant to their potential effectiveness as intervenors.

There was also concern about the set-up of the hearing room in terms of how it affected public participation. Having the NEB panel situated on a raised dais created a "courtroom-like" atmosphere; this was seen to further fuel the perceived imbalance created for those participants who did not have access to legal counsel.

When asked whether they felt adequately prepared to participate in the manner required by the public hearing process, many responded they would need resources more in line with what the proponent had at their disposal in order to be adequately prepared to offer a meaningful submission.

"I'm used to putting together a scholarly sort of document but I don't think that the layperson is used to doing that – what I would read is that there were many briefs that [were] technical and academic but there were others that were more impressionistic [dealing with feelings about the project as opposed to technical analyses] and I don't think the panel cared about the impressionistic ones. I think if it hadn't been a substituted process; if it had been more of a process of discovery it would have been better." (Intervenor)

"I was nervous but as I said the whole atmosphere of the hearings is intimidating because of the set up with the lawyers sitting up front - the Emera Group - and

those of us on the other side are just average people. It was intimidating and they [the panel] are so isolated up front it is simply not user friendly." (Oral Statement)

"Well, to be honest I was glad I wasn't an intervenor because working full time there was no way I could have been. Because you needed to spend so much time in preparation and even mine took a long time and I was nervous – I really think they could have made it more user-friendly. They were all nice people though." (Oral Statement)

"Yes. It would have helped if my proposition could have been supported by a recognized expert in the field of submarine pipeline construction. I had no funds to hire one." (Intervenor)

There were, of course, many participants for whom this type of process is a normal part of their job responsibilities who stated they were both very comfortable with the process, and adequately prepared to participate. Their comfort level and preparedness was based, to a certain degree, on the resources at their disposal including legal counsel, expert opinions, and even witness training; some of them acknowledged that this created a disparity between them and participants drawn from the general public:

"I was [comfortable]…I never go into these things without being fully prepared: I had all my documents, I had a series of experts with me, I had the head of the EA sections and the EA coordinator so if we got a question I was able to confer with them before responding. We had witness training from our legal counsel, and a half-day refresher in media training…The general public wouldn't have any of that. The only way to make any type of comparison is that they were doing this because of conviction and we were doing our job. It takes a great deal of courage for people to get up and speak to those types of issues." (Intervenor)

"Now I know for the general public those types of formal processes are very difficult for someone who is not used to the process. We like the formality but from the public's perception it is not perhaps a comfortable process – there are lawyers and if you are not comfortable with the lingo it can be intimidating. From a professional viewpoint the process offers clear deadlines and timelines and we know what needs to happen and when and we just work towards that schedule." (Intervenor)

One issue that proved a difficulty for many participants was the sheer volume of information generated by the proceedings, and the challenges they faced in trying to keep abreast of anything that affected or spoke to their submission.

"Again they [the proponent] have experience in handling large volumes of information so they are organized and very good at it but it is another intimidating thing for people who aren't used to that." (Intervenor)

"…when I deal with the compensation appeal system I get one big docket and I go through it. That would have been better because I was getting some stuff hand

delivered, some stuff delivered to my house, some stuff on e-mail and it was very inconvenient." (Intervenor)

"When the hearings were taking place that became very tight and there were only hours to do that [respond to evidence being presented] so it was very difficult to do all that without a staff! The paperwork was unbelievable." (Intervenor)

Cross-Examination and the Legal Question

"There is some kind of a phrase…anyone can be an intervenor and you don't have to be a lawyer and you can do it yourself but it is recommended that you have a lawyer [relating to remembered instruction or advice given to intervenors during a pre-hearing session]. My view is that there should be a public intervenor and it should be a really long process. To say that you can do it yourself is a falsehood. Yes, we did it and we did a great job, but it would have been much more effective to have had a lawyer with experience in these boards." (Intervenor)

Participating in cross-examination brought to the forefront the imbalance issue for many respondents. There was a perception that the proponent's lawyer was able to have too much evidence and too many questions disallowed because of procedural rulings by the NEB panel; his expertise in and understanding of the finer points of the NEB panel's quasi-judicial processes and his perceived ability to utilize that knowledge to "manipulate proceedings" in favour of the proponent was seen to give the proponent an unreasonable advantage. There was also a perception that respondent panels[3] made the procedure challenging because they could not be recalled for questioning after their appearance. It is certainly evident that there were respondents who did not understand how the panel process worked in regards to cross-examination within the scope of the process. There was also concern expressed about the disparity created because cross-examiners faced a team of people who could confer prior to responding.

"My problem was that it always came down to having to fight to ask the question. The panel itself seemed to be protecting the company and gave the lawyer for them too much leeway and not enough leeway for the people on the other side." (Intervenor)

"A lot of questions got deferred and you have a panel in front of you and they would pass it on to the next panel and then we'd ask the next panel and they would say the last panel should have answered the question. But you couldn't go back to that panel. There should have been a way to recall panels in that case." (Intervenor)

"Because of their understanding of the process and what they could cover there were a lot of cases where people speaking on their own behalf were asking the

[3] Referring to a series of panels of experts called to testify and respond to questioning on specific aspects of the project.

wrong panel questions so their issue couldn't be dealt with and they didn't understand that." (Intervenor)

"Yes [I did cross-examine]. Any new evidence you had a chance to challenge it and I did cross-examine but their lawyer had an advantage. The three person panel had their heads together many times to make decisions about things ...I enjoyed the process." (Intervenor)

"The unfairness came from the fact that I go up to the mic as an individual person and when I am asking a person a question they were able to talk to everyone up there and come up with an answer." (Intervenor)

It is important to remember that this is an examination of viewpoints and opinions. Whether those presented here actually reflect the reality of the hearing room is not in question: these perceptions did exist, however. There is no question that many respondents felt that the hearings were so quasi-judicial in nature they favoured any participant who had access to legal advice if they were going to effectively cross-examine the proponent or other intervenors. It should be noted that there were not a large number of respondents who were actually cross-examined by the proponent's lawyer, however. This, too, posed a problem for some respondents as they felt the proponent was simply not concerned with their evidence, seemingly proving its irrelevance.

"Our lawyer cross-examined the proponent and it had to do with why they went with the standalone pipeline and how [respondent's organization] would access gas if that project went forward and what the cost. I think our position was heard and our points were considered." (Intervenor)

"Yes…I wasn't cross-examined a lot even [counsel for the proponent] and I had a few jokes on the side – they accepted my expertise. I think some of them may have been intimated but not a lot came under a lot of scrutiny." (Intervenor)

"I think so [that the process was imbalanced] because you are there by your lonesome and there across the table are these six lawyers in suits I felt it was an un-level playing field." (Intervenor)

"A legal representative could probably have curbed the chair's interference with the intervenors' questioning which was sometimes heavy handed, and he or she could have curbed [lawyer for the proponent] from directing the Board, but it would be difficult to find in Saint John a lawyer totally versed in the CEAA and the NEBA to stand up against the Calgary lawyers who apply these Acts frequently in the oil business." (Intervenor)

"Yeah, I really think it would have been wonderful if we could have had someone to help us through the process in thinking about what we really wanted to say and how to say it." (Intervenor)

"I would very much to like to have had a lawyer because when I talked about these things immediately their lawyer got up and shut me up. It's very difficult I could probably do better now having been through it but you really should have legal and technical information from people who have experience with the process." (Intervenor)

Procedure and Logistics

> ***"I think that was pretty good and you could request changes and they responded to that very well. The NEB did do a good job of making sure we knew what to***

The majority of respondents believed that the hearing schedule made reasonable accommodation for people who had obligations outside the scope of the public hearing. The inclusion of evening sessions was generally appreciated, and the Board was seen as being flexible enough to accommodate unforeseen circumstances such as illness or personal obligation. There were no negative comments on logistics relating to the set-up of the hearings such as the location selected or accessibility.

"I think the hearing worked pretty well – we did run over and the boards were quite patient and they were down here and sequestered they did a good job." (Intervenor)

"I think so [that the hours and dates were adequate] for the simple reason that some people work in the daytime so there were evening hours. I felt bad for the tribunal because they had to be there all the time." (Intervenor)

"I think they were more than flexible because they in fact extended the hearings by a week because it was taking longer because the people against were taking so much time and they really were very flexible. The hearings are normally during the business day and a lot of the people who registered against said they needed something after hours and they were flexible and accommodating and did some hearings in the evenings. For us that was a negative but the Board was indeed flexible in trying to meet the needs of everyone." (Oral Statement)

"They extended it by a couple of days because they couldn't get through and I think it was convenient times." (Oral Statement)

"I think the big problem was not the specific days or hours but who was allowed to speak and what subjects were allowed to be covered. " (Intervenor)

"Yes, and they did change people around because they were sick or couldn't come one guy his wife [was ill] and they were accommodating." (Intervenor)

There were several respondents who did believe that more time should have been allocated to the hearings. Key to their perception that the hearings were not long enough was the fact that final oral summations were not allowed because of time restraints, therefore summations were presented in written form. As some respondents believed that the media had planned to cover the oral summations, this was seen to be extremely prejudicial on the part of the panel. This was compounded by the understanding of some participants that NEB staff had indicated in one of the pre-hearing sessions that oral conclusions had greater weight than written ones.

"[The panel could have] allocated more time; it's as simple as that. It's an organization with a lot to do and they should have gotten it finished. We should have had a chance to do our oral summations." (Intervenor)

"We couldn't do the oral summations." (Intervenor)

"The thing was if we had been able to give those oral presentations it would have had a far greater impact because the media was there. We had to provide a written summation and that let a lot of us down. The media would have covered it. Nobody had the chance to do an oral summation." (Intervenor)

"No oral conclusions were allowed because of time constraints. But the NEB rep said at the meeting that oral conclusions have greater weight than written ones and we didn't have the advantage of having high priced lawyers." (Intervenor)

There were also respondents who believed that hearings should be organized in such a way that all intervenors, and a majority of all participants, would be in a position to attend all – or at least most – of the hearings. These respondents found extending the hours to ensure the prescribed end date was met to be a challenge in terms of the actual length of the sessions and the amount of time it left them to review materials for the next day.

"It should be kept in mind that many intervenors have careers or occupations. Participating in such a Hearing requires juggling hours. During these Hearings the hearing hours were frequently changed. They went sometimes for 10 or even 12 hours. It seems to me that the Board was inexperienced in forecasting the amount of time needed to complete the hearing and was insistent in finishing it in the allotted number of days. On the end they had one full day to spare. It created a hardship for working intervenors, and most could not attend all sessions." (Intervenor)

"I think the time was designed to minimize the cost to the corporate sector because they are all dealing with billable hours and unfortunately the community side was not dealing with that so there wasn't reasonably an appropriate amount time. This was in addition to our workday so you'd spend your day at the session, go through the transcripts that night – it was awful and it was designed to minimize their costs." (Intervenor)

Perceived Validity of Process

Understanding decision-making

There were slightly more respondents who stated that they understood "how the decisions of the National Energy Board were going to be made prior to participating in the process" than those who did not. A total of 18 respondents (who answered this question directly) responded yes, while another 12 responded in the negative. As to whether respondents understood "how decisions are made under the Canadian Environmental Assessment Act" the tally was exactly the same, 18 stated they did understand how decisions are made under the CEA, and 12 responded that they did not. After probing, however, it was determined that a fair number of those who responded positively to these queries were certainly not well versed in the nuances of either the NEB decision-making process or of the Canadian Environmental Assessment Act. This is not surprising considering the number of respondents who took part in the process as a member of the general public as opposed to participating because it was their professional responsibility.

"I thought I did." (Intervenor)

"I would think there was something publicly outlined so I likely knew." (Oral Statement)

"My understanding were that they would listen to people and then a make a decision." (Intervenor)

"I didn't know anything about it. Prior to the pipeline coming to the park I didn't even know there was a NEB." (Intervenor)

"Not really. I just thought they would listen to both sides and look at the environmental impact." (Intervenor)

"Most of my involvement involved learning some thing instead of knowing in advance." (Intervenor)

Did Participants Believe their Submissions Could Influence the Decision?

> *"I think it should have had the potential to change the decision but again I really don't think people who are in the oil and gas business should be making these decisions. There should be three who aren't involved in the industry along with those three on the Board. It would be interesting to look at all their decisions they have made over the years and see how many were actually turned down."* (Oral Statement)

Respondents were mixed in their evaluation as to whether the public hearing gave them the opportunity to influence decisions made regarding the Emera Brunswick Pipeline. As with many questions on the process there was a clear delineation between those who felt the process did afford them the opportunity to influence decisions, and those who felt it was a "foregone conclusion". Professionals involved in environmental assessment processes on a regular basis were generally both confident that the process worked, and that their input had the potential to influence the Board's decision.

"People had the opportunity to raise issues so I would like to think that could have influenced the Board. For all intents and purposes this wasn't a complicated project. If we had a major environmental issue and that would have – or should have – influenced the Board decision. We believe it would have." (Intervenor)

"I think so. Sometimes it is hard for the general public who don't have experience to frame things properly and to make sure their concerns are expressed in a way that ties into the project. They need to say why in a specific way, not just say we don't want a pipeline." (Intervenor)

"Yes, I think so. The sense I got – the people I interacted with on the file – really wanted to make sure that policy issues were considered." (Intervenor)

Respondents who did not believe that their submission had the potential to influence the outcome were generally participants who opposed the project, or who wanted to see an alternate route considered. Though this would seem to indicate that they judged the validity of the process strictly on outcome, there were valid procedural points made by these respondents. Objections centred around the fact that the review panel was made up of industry professionals and that the environmental assessment was being carried out under the process of the National Energy Board whose mandate relates to regulation of the pipelines, energy development and trade, including the oil and gas industry. There were also those who actually thought that the process would have worked well were it not for what they perceived to be a bias on the part of the actual panel members.

"I believe the process did [work well] but I don't believe the panel did. I believe that they had their minds made up. It is not the actual process that was the

problem and I spent a number of days down there watching – it was the panel itself that had already made their decision." (Intervenor)

"It did to the point that we were all able to present or opinion. But I did feel that there was bias there because of the NEB major mandate, which is to facilitate industrial issues. They really didn't pay enough attention to the opponents of this project even though they heard and sympathized with what we said. I really don't think that in the end our submission carried that much weight in the final decision." (Intervenor)

"I really don't think that it had any influence at all on the final decision. When you read the final report they [the NEB panel] pretty much ignored the arguments of the people that live here and nothing was changed because of the hearings. I can't really see how the public had any effect on the outcome." (Intervenor)

On another note, there were participants who submitted letters of comment and who delivered oral statements who expressed a concern that their choice of participant category rendered their submissions less effective than those who opted for intervenor status.[4] There are certainly action steps that could be taken to mitigate this particular concern.

"I suppose if I had been an intervenor. I didn't know if putting in a letter of comment would have an effect but I guess they would read them." (Letter of Comment)

"At the hearings everything is recorded but when they were actually deliberating they deliberated more on the intervenors than those of us who made Oral Statements." (Oral Statement)

Stakeholders Views

Respondents were also asked whether the process allowed the public and stakeholders such as community groups, commercial landowners and aboriginal groups to have their views considered in a meaningful way. Again, responses could be grouped into two distinct categories. There were many respondents who did feel that the process afforded stakeholders views meaningful consideration, but, once again, these opinions tended to emanate from professionals well versed in such a process. This group was generally quite positive about the consideration given to stakeholder groups.

"Yes, I believe it did because they were there and the panel was very accommodating to them. They did direct areas they could go into and areas they could not go into but the chair was - well, I left that meeting with a great admiration for that chairperson. It was intense and she managed it well." (Intervenor)

"Yes. I know…that everyone had the opportunity to speak and give their opinions and there was not a time limit they could talk as long as they wanted." (Intervenor)

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[4] NEB documentation did explicitly point out the limitations of these two categories of participation.

"So, I actually do think it is meaningful and that they are accommodated into the process. They have to do their homework but you know some of the groups were very well- organized and good points were raised." (Intervenor)

"Oh yes, I think they did." (Letter of Comment)

"I just am more comfortable with the NEB process and have been to 8 or 10 different proceedings and the CEAA process just doesn't seem to be as transparent to me. Because it is a tribunal and you can't just say, "Well, I think this ..," so you get rid of a lot of opinions and it is more fact based. It eliminates those people who have problems with everything." (Intervenor)

There was also a group of respondents who believed that there was an "on the record" allowance for stakeholder input, although the Board was predisposed to disregard their evidence, and believed their mandate was not exclusively nor even most significantly about the environmental assessment. There was a feeling that though stakeholder input was heard there was no course of action that could be taken to have those opinions impact on the direction of the public hearing.

"On the record, yes, but you see here's the weakness: if you have a situation where you have a Board that is hired to enhance these kind of projects how can they really and truly look at the other side?" (Intervenor)

"Only partially…there was little room for important discussion to take place where we could – where the back and forth might occur. It was not discussion. There was no trying to find something that would work as a whole. It was about trying to find a winner." (Intervenor)

"It certainly had the potential, but the Board was really not interested. Maybe they were frustrated by the 'unprofessional' behavior of the resident intervenors. But the Board should have realized that you do not make litigation lawyers out of ordinary citizens over night." (Intervenor)

The process related issue most often mentioned by respondents as disproving the validity of the public hearings was the perceived barring of evidence related to an alternate route proposed by a group of participants. Though discussion of alternative routes was included within the text of the scoping document, the only alternate route proposal allowed – according to several respondents - came from the proponent, and some respondents believed that the proponent's alternate route proposal had been made purposely unfeasible. There were participants who believed that by disallowing evidence of an underwater pipeline route, the validity of the process was questionable because the only recourse for the Board if they did not seriously consider alternatives was to either grant approval for the pipeline, or to deny approval. The respondents believed that their alternative offered a reasonable compromise that should have, at the very least, warranted a fulsome discussion.

"More importantly, the scoping documents said people could discuss the alternate route but the proponent refused to look at any details about that. And the NEB said if the proponent doesn't want to talk about it [the alternate route] we are not going to talk about it." (Intervenor)

"[An intervenor] was a project engineer and did a pile line underwater here in Saint John and they wouldn't let him talk about it when he had worked out a budget for this project for the underwater alternative. You know I couldn't believe that was allowed - that the proponent had and was able to present an unsubstantiated budget for the underwater pipeline. There was no information on where they came up with the figures, no factual information attached. And yet it was accepted and he [the project engineer] was unable to speak." (Intervenor)

"The other route was a little more expensive and maybe longer and it was never considered and that to me was wrong. If a company wants to do things that is fine but if there are alternatives they should be looked at and it didn't seem to me that alternatives were given a very high priority. We spoke on it but it didn't get the kind of scrutiny and in-depth discussion [it warranted]." (Intervenor)

"No. I had hoped that all submissions would be taken into consideration. As it turns out, the position of the proponent was adopted, alternatives were mentioned and than dismissed using the proponent's arguments, and I for one came away from this process with the feeling of having had an exercise in futility." (Intervenor)

Most respondents did believe that their submissions were adequately responded to by the NEB, though there were a number of participants who had no idea that there actually was a response to their submission because they did not read the final report. There were those who did not feel the response was adequate, but these, as in previous analyses of process, tended to be respondents who believed the decision was pre-determined.

"For a project of this magnitude I had no difficulty with that side of it [responses to submissions]." (Intervenor)

"We didn't receive any individual response, the only response was their decision and the environmental assessment report and neither one addressed our concerns. It was simply a rehash of the proposal." (Intervenor)

The Substituted Process: Evaluation and Comparison as an Environmental Assessment Tool

> *"It is more difficult for the general public. The NEB process is far more formal and the CEAA process is far more informal. You can be uncomfortable in both situations – I certainly prefer the CEAA panel process but I do support having one process. There are generally two different processes - even a third if you need a provincial assessment – so the substitution process worked very well from my perspective."*
> (Intervenor)

In this section respondents' evaluation of the substituted process is examined as it compares, in their opinion, to the CEAA panel review. In some cases respondents had not taken part in a previous CEAA review, but felt familiar enough with both processes to offer comparative analysis.

Respondents were asked whether they were made aware that the environmental assessment process for the Emera Brunswick Pipeline was a "substituted" process, in that a different federal authority than usual handled the assessment. A total of 18 respondents (mostly intervenors) were aware that it was a substituted process, and most of those understood that it was the first time that a federal environmental assessment panel was carried out by a federal organization other than a CEAA-appointed review panel. Another 17 respondents were not aware; among this number were the majority of letter writers and oral statement givers who by reason of their level of involvement were likely not as aware of many specific details of the process.

Respondents who have had previous experience in participating in environmental assessments tended to be professionals for whom environmental assessments comprise a part of their job responsibilities, and for most of them the substituted process compared favourably to the CEAA panel review primarily because of perceived improvements to timelines and efficiencies. As previously noted, the CEAA process runs parallel to the NEB process, therefore two separate processes are required. In this instance, there was only one process; for many professionals this was seen as a significant time and resource saving.

"I think it goes faster (the substituted process) because it is all in one as opposed to having timelines for one and that feeding into that other decision timeline."
(Intervenor)

"The real benefit of the way it was done is that it was one process. It provides for regulatory efficiency and it doesn't give two kicks at the cat." (Intervenor)

"When people make an application for a pipeline it is both economics and environmentals and for some of the intervenors who might be in on the CEAA process they might not be in on all the NEB process. So as a proponent you have to repeat a lot of your work. But in this case you don't have to keep repeating everything and it certainly reduces costs for all parties involved." (Intervenor)

"What is deficient with …the CEAA process in contrast to provincial environmental assistance is that when you make an application for EA to the province you hear from us in 60 days with a decision. But energy projects get caught up in the CEAA process and everyone is left wondering when they are going to hear back from them. CEAA needs to establish timelines to provide certainty because certainty is a real killer in terms of projects planning, project sanction, and project funding. They want to go to their boards to get money and they don't have an EA – a big part of larger scale projects is to go out and get it fully approved from a regulatory perspective. When someone is entering into a relatively fulsome CEAA process you are looking at someone spending serious dollars and I think that needs to be taken a bit more seriously." (Intervenor)

"I just am more comfortable with the NEB process and have been to 8 or 10 different proceedings and the CEAA process just doesn't seem to be as transparent to me. Because it is a tribunal and you can't just say, "Well, I think this .." so you get rid of a lot of opinions and it is more fact based. It eliminates those people who have problems with everything." (Intervenor)

"Two separate processes running sequentially which takes a lot of time. Keep it simple for members of the public. I think it is decidedly better." (Intervenor)

Among these respondents who preferred the substituted process because of its efficiency there was acknowledgment, as has been noted before, that this more formal type of process could be less "conducive to public involvement" because of restrictions on participating (in the CEAA process unregistered members of the public can make statements). Still, while pointing out the challenges inherent in the more formal process, these respondents wholly supported the notion of "one process", and it was also noted that though the NEB process was more formal, that formality did not restrict the public from participating in a meaningful way. Indeed, some respondents believed it allowed for more meaningful public participation because it gave the public the opportunity to contest and challenge (and specifically to cross-examine) the proponent in a public forum.

"If we go back to the formality and the informality – a CEAA process is more conducive to public involvement. At the end of each day the panel members ask if there was anyone else on the audience who wanted to make a statement so even if they hadn't registered they could but I am all for doing one process." (Intervenor)

"Some people think it's intimidating but …when you have an EA panel or any review under CEAA it is very informal while in front of the NEB it is quite formal but there are advantages and disadvantages to both types. I don't think the formality kept anyone from speaking." (Intervenor)

"I think substituted authority should be the way we do this because it is simpler for the general public. People can have their say and question the people with the information. The problem is the alternative doesn't always allow them to do that and it is a bit procedurally obscure." (Intervenor)

"It allows for better public input because the public can test the information put forward by the proponent and can contest and challenge them in a public forum." (Intervenor)

"I guess if I just stood back I would say that the single process is critical and I believe it gives all parties the opportunities to state their points and that is what a public process is all about." (Intervenor)

A considerable number of respondents drawn from the general public, though aware that this was a substituted process, did not perceive it to give enough weight to the environmental aspect of the approval process, and believed that the CEAA panel process offers a more comprehensive environmental assessment. There were also some participants who, though aware of the fact that this was a substituted process, did not feel that the implications of the substitution process were adequately explained. The CEAA process is seen by some respondents to focus more on "discovery" and "informality", as well as (perhaps most significantly) providing a forum where the entire focus is the environmental assessment. Some respondents actually felt that the NEB substituted process did not reflect the "sprit and the letter" of the Canadian Environmental Assessment Act.

"This wasn't an environmental assessment to my mind. It was not discussed very much." (Intervenor)

"Yes, however the implications of it were not explained. I was not made aware that the Board would re-interpret the pivotal CEAA Section 16(1)&(2). In the Hearing Record #14877 the NEB Board states that should it be satisfied with the proponent's evaluation of alternative means, than it would be only able to judge the appropriateness of the proponent's "Preferred Corridor". The Board would therefore not evaluate an alternative proposed by an intervenor *but accepts the proponent's interpretation. This is contrary to the spirit and the letter of CEAA 16(1) and (2)." (Intervenor)*

"I had expected that substituting the CEAA process would nevertheless guarantee that the CEAA purposes and requirements would receive full recognition and would be accordingly implemented. This did not happen." (Intervenor)

"...I don't think they [the NEB] had the expertise from an environmental viewpoint to really study this thing as they as they should have." (Intervenor)

"I haven't been though one where CEAA ran the process but it seems to me that NEB sees the proponent as their client and that their job is to make sure they [the proponent] get what they want. I really don't think the environment ....is seen as a part of their responsibility on the part of the NEB." (Intervenor)

Expectations and Value of Participation

> *"The difficult part from a proponent's perspective is - meaningful consultation - the definition around that might be that you have all these open houses and information sessions but perhaps the public doesn't think it was meaningful. You had your meetings and consultation and met with landowners and you have done what is needed, but if the public don't like what you are doing I don't know if you can have enough meetings to address al their concerns. So I guess the whole scope around consultation and what is adequate depends on your perspective."* (Intervenor)

Expectations are, by their nature, subjective. Respondents' expectations for the public hearing process for the Emera Brunswick Pipeline were very much dependant on their type of involvement with the process, and their experience with this type of procedure. Many respondents that came from within the ranks of the general public felt that the public hearings did not meet their expectations primarily because they did not believe that their views were considered in a meaningful way; they did not believe that the outcome reflected their input in any way.

Most professionals had their expectations met; they would have very realistic expectations based on previous experience, though, so their expectations would reasonably reflect what they actually knew would take place. Respondents were asked whether they believed the process provided a timely and meaningful public participation; their responses reflect both their expectations for the process, and for what they perceived timely and meaningful public participation to encompass. Some respondents wondered whether there could ever be enough consultation on a particular project to meet everyone's expectations; others believed that though the process met their expectations for having the public's viewpoints heard, those viewpoints were not, in the end, given enough weight.

"I believe that it did. I am not sure how many meetings you are supposed to have and even in the paper they had lots of information. If interested people wanted to know they could access and I felt they had the opportunity to have their opinion heard and responded to." (Intervenor)

"Timely yes, meaningful, no. Fast and meaningless. We can do some really stupid things really fast. If the main goal is get these things done quickly they did a great job. If the goal was to have public input it wasn't successful." (Intervenor)

"Well, yes it did meet our expectation which were that they would hear from the community and they certainly did." (Oral Statement)

"As far as in it's own right it did - I have to be fair. These people were fair and the Board was fair but the one failing of this process was the amount of consideration that should have been given to our side of the argument. I don't think they really looked at the opposition and thought they really gave us something here and we

need to look at it. They gave it lip service – make it look like it's going to change something but your mind is made up." (Intervenor)

"I certainly don't think it was meaningful as far as the public was concerned. I guess it was timely as it went quickly. From the proponent's perspective it was timely all right but I just don't see that the public had any real input into this." (Intervenor)

"I think that people with concerns did have an opportunity to express them. I don't know that they were given the appropriate weight." (Intervenor)

A key concern outlined by several respondents was their perception that there was no allowance for the discussion of "incrementalism," or gradualism; they had expected that a formal hearing on the pipeline would allow for this type of analysis. Because the Emera Brunswick Pipeline process dealt only with the pipeline itself, respondents believed that is disallowed important evidence related to future environmental impact because it did not allow for informed speculation as to the types of facilities that would be needed to put in place to make the pipeline viable. There was a feeling that the proponents of this type of industrial expansion provide the public with piecemeal information that does not reflect their actual long-term objective; several respondents felt this restriction did not allow reflection on and analysis of the true long-term impact of the pipeline project.

"No. I had great faith in the process and my expectations were not met at all. There was a chance to speak but the serious thing was that you could talk about the pipeline but you couldn't talk about the refinery, the tanker traffic. It was like the pipeline had no beginning and no end. They deal with a slice but they don't deal with the whole." (Intervenor)

"I guess the other thing is that it is the process of incrementalism – the original environmental assessment [for a different portion of the project, not the pipeline per say] took place under the jurisdiction of the province so there wasn't anywhere near the review that CEAA would do. Now they are talking about a new facility – we are going to put in a gasoline pipeline now but what is it really in store for in the future? We don't see the whole picture." (Intervenor)

Participants were also asked whether they would participate in this type of process again. Obviously, those for whom this is a part and parcel of their jobs would be doing so. As to those for whom this was a first time venture, or for whom this was a process they participated in because they felt public involvement was important to the betterment of their community, there were two schools of thought. There were those who believed the process to be so flawed that participation was a waste of time and effort. And there were those who believed that their participation "made a difference". Indeed, the "difference" made was seen by some respondents to be "incremental" as well; public participation in such proceedings is seen to be ever increasing, fueled by those members of the public who make the effort to have their view and opinions heard.

"I would do it again because I believe the public has to stand up and be counted. It's no use complaining after the fact." (Intervenor)

"I don't feel that we got any results for the time effort and money we put into it and I would be reluctant because of the time and money and frustration and as I now believe there is not much chance for effect for the outcome why would I do that again?" (Intervenor)

"The process did not meet my expectations, although participating was worthwhile because a dedicated group of citizens of Saint John came to know each other and became convinced that they still have to watch if this pipeline is constructed, operated and monitored in a manner which safeguards the quality of live for all of us." (Intervenor)

"I think it made a difference in that we set a precedent years ago no one would have done this and you wouldn't have had a meeting that lasted 20 days – the average person on the street is starting to say if this affects my life, even my piece of mind, I have a right to say something." (Intervenor)

"I think it made a difference in that it told the country there are a lot of people interested in this thing – in that essence we won. We thought we could win and we put up a good fight. We made a difference." (Intervenor)

SECTION IV – CONCLUSIONS

The following considerations are presented as a synopsis of the key changes suggested by participants that they felt would improve future substituted processes:

1. A first key message is the need to address the discomfort that many members of the general public expressed with the "quasi-judicial" nature of the NEB hearings; a view corroborated by some professional respondents who actually preferred the NEB process, but who expressed concern that this process could be less conducive to public involvement specifically because of its "quasi-judicial" nature.

2. There are many courses of action that might be considered to reduce the perceived intimidation of the courtroom-like atmosphere; most of them would likely work best in concert with one another. Some suggestions derived from participant comments include:

- changes to the set-up of the actual hearing room, which some felt gave the hearings a legal and even adversarial appearance;
- changes to procedure as it relates to evidence submissions to ensure procedural rulings are not seen to favour the proponent;
- increased availability of training for participants to ensure members of the general public are adequately prepared to effectively participate; and,
- allowance for legal aid of some kind for all participants; this could include the appointment of a public counsel or the provision of funding to hire counsel.

3. A second consideration is addressing the perception among some participants that the environmental assessment portion of an NEB or any other substituted process is not seen to be as robust as a CEAA review panel process. Suggestions derived from participant interviews include:

- inclusion of an environmental assessment expert from outside the energy industry in the make-up of the hearing panel;
- applying increased focus on environmental assessment within the auspices of a substituted process; and,
- instituting an arm's length appointment process for environmental assessment consultants preparing the Environmental Impact Statement for a project.

4. A final conclusion arising from the interviews is the need to increase efforts to ensure that all participants are aware when a substituted process is being employed, and to make sure participants understand both the implications of the substituted process and how decisions of the National Energy Board (or any other substituted authority) are going to be made. Participants should also be made aware of how decisions are made under the Canadian Environmental Assessment Act.

APPENDIX A:
Invitation Letter (English & French)

Canadian Environmental Assessment Agency
160 Elgin St., 22nd floor
Ottawa ON K1A 0H3

Agence canadienne d'évaluation environnementale
160, rue Elgin, 22e étage
Ottawa ON K1A 0H3

Ottawa - January 11, 2008

Dear participant:

The Canadian Environmental Assessment Agency (the Agency) is conducting a research initiative to assist with the development of policies and planning with regard to future environmental assessments (EAs). The Agency is particularly interested in learning about your experience in the public hearings held by the National Energy Board for the Emera Brunswick Pipeline project. The Agency has commissioned Ipsos-Reid to conduct an independent, objective survey, to learn more about the experience from participants like you.

We will select 160 participants whom Ipsos-Reid may contact in the conduct of the evaluation. We ask that, if contacted, you consider participating in this survey. Your input will help the Agency to better understand the views of participants with regard to the practice of this first pilot substituted review panel under the *Canadian Environmental Assessment Act*.

We assure you that all individual responses to the survey are voluntary and will be kept strictly anonymous. The goal of the survey is to gather perspectives of participants, including satisfaction with the substituted process, as well as any other comments or considerations you may have had with the review process. The results of your participation will be incorporated into a broader evaluation currently being conducted by the Agency.

If selected for an interview, we expect you will be contacted between January 10, 2008 and February 15, 2008.

If you would like your name to be excluded from the sample, please contact Joseph Ronzio at joseph.ronzio@ceaa-acee.gc.ca or 613-948-2198 and your name will be removed from our contact list, and will not receive further communications from the Agency or Ipsos-Reid on this matter.

Thank you for your time and interest in this research effort. Your valuable input will help us to shape the practice of EA in Canada.

Best Regards,

[Original signed by]

Yves Leboeuf,
Vice President Policy Development
Canadian Environmental Assessment Agency

Canadian Environmental Assessment Agency
160 Elgin St., 22nd floor
Ottawa ON K1A 0H3

Agence canadienne d'évaluation environnementale
160, rue Elgin, 22e étage
Ottawa ON K1A 0H3

Ottawa, le 11 janvier 2008

Cher participant(e) :

L'Agence canadienne d'évaluation environnementale (l'Agence) dirige un projet de recherche afin d'aider à l'élaboration de politiques et à la planification au regard des évaluations environnementales (EEs) futures. L'Agence est particulièrement intéressée à en savoir davantage sur votre expérience en ce qui a trait aux audiences publiques tenues par l'Office national de l'énergie dans le cadre du projet de gazoduc Emera Brunswick. L'Agence a retenu les services de la firme Ipsos-Reid pour réaliser un sondage indépendant, objectif, afin de mieux cerner l'expérience vécue par des participants comme vous.

Nous sélecterons 160 participants avec qui la firme Ipsos-Reid pourrait communiquer dans le cadre de l'évaluation. Le cas échéant, nous vous demandons, de prendre en considération la possibilité de participer au sondage. Vos commentaires permettront à l'Agence de mieux comprendre les points de vue des participants en ce qui concerne la mise à l'essai de ce premier projet pilote du processus de substitution relativement à l'EE par commission d'examen menée en vertu de la *Loi canadienne sur l'évaluation environnementale*.

Nous vous donnons la garantie que toutes les réponses fournies par les participants à ce sondage sont librement consenties et resteront tout à fait anonymes. L'objectif visé étant de recueillir les points de vue des participants, notamment quant à leur satisfaction par rapport au processus de substitution, ainsi que leurs commentaires ou suggestions par rapport au processus d'examen. Vos commentaires seront intégrés à une évaluation plus large qui est menée actuellement par l'Agence.

Si vous êtes retenu pour une entrevue, nous prévoyons communiquer avec vous entre le 10 janvier et le 15 février 2008.

Si vous désirez que votre nom soit enlevé de l'échantillon, veuillez contacter Joseph Ronzio à joseph.ronzio@ceaa-acee.gc.ca ou 613-948-2198. Votre nom sera alors retiré de la liste des personnes-ressources et vous ne recevrez plus aucune communication de l'Agence ou de la firme Ipsos-Reid sur cette question.

Nous vous remercions de nous avoir accordé de votre temps dans le cadre de ce projet de recherche. Vos commentaires nous aideront à mettre au point une meilleure pratique de l'EE au Canada.

Merci

[Original signé par]

Yves Leboeuf,
Vice-président, Élaboration des politiques
Agence canadienne d'évaluation environnementale

APPENDIX B: Interview Guide (English & French)

Environment Canada

Substituted EA Process Assessment

One-on-One Interviews

February/March 2008

Hello, may I speak with [INSERT NAME OF INDIVIDUAL]?

[WHEN DESIGNATED CONTACT AVAILABLE, READ FOLLOWING. IF NOT AVAILABLE, ASK WHEN WOULD BE A GOOD TIME TO CALL BACK AND LEAVE YOUR NAME AND NUMBER].

Hello, my name is _____ calling from Ipsos-Reid. As you may know, the Canadian Environmental Assessment Agency has commissioned Ipsos-Reid to conduct a series of interviews among participants in the substituted environmental assessment process for the Emera Brunswick Pipeline that took place in 2006.

The purpose of these interviews is to talk about your experience with and perceptions of the substituted environmental assessment process. This was the first substituted review panel process utilized under the Canadian Environmental Assessment Act. The Canadian Environmental Assessment Agency has commissioned this research to

determine participants' overall satisfaction with the substituted process, as well as to gather any other comments or considerations from participants in order to continue to shape the practice of environmental assessment in Canada.

The interview will take around 30 minutes. Your responses will remain completely confidential and will only be reported in combination with others. Are you free to do the interview now or would you like to set up a time between now and March 3?

[IF 'YES' PROCEED TO INTERVIEW, OR ARRANGE APPOINTMENT FOR INTERVIEW. IF NO THANK AND TERMINATE OR ARRANGE CALLBACK]

START INTERVIEW – Thank you very much for agreeing to participate. Let's get started.

Section I – Warm-up, Level of Participation and General Impressions

Tell me a little about your participation in the environmental assessment process for the Emera Brunswick Pipeline.

Did you participate as an intervenor/oral presenter/through a letter of concern? [CONFIRM PER PROFILE]

Were you representing yourself or an organization [PROMPT COMMUNITY GROUP, INDUSTRY SECTOR, OTHER] If you represented a group, in which capacity did you represent them? [DETERMINE WHETHER RESPONDENT WAS A MEMBER OF THE ORGANIZATION, LEGAL COUNSEL, OR REPRESENTED THEM IN ANOTHER CAPACITY.]

What are the main things you remember about participating? [IF NECESSARY PROVIDE MORE INFORMATION ABOUT THE PROCESS]

Why did you get involved? [PROBE ON REASONS FOR INVOLVEMENT E.G. PROFESSIONAL OR PERSONALLY AFFECTED.]

I'm going to ask you to rate your overall impressions of the public hearing process for the Emera Brunswick Pipeline? How satisfied are you with your experience of the process? REMIND RESPONDENT THAT THEY ARE NOT RATING THE OUTCOME OF THE PROCESS.

- ❑ Very satisfied
- ❑ Somewhat satisfied
- ❑ Not very satisfied
- ❑ Not at all satisfied

Why do you say that?

Were you made aware that this environmental assessment process for the Emera Brunswick Pipeline was a "substituted" process, in that a different federal authority than usual handled the assessment?

Were you aware that it was the first time that a federal environmental assessment panel was carried out by a federal organization other than a CEAA-appointed Review Panel?

Do you think this substitution affected your participation in any way? How?

Have you ever personally participated in a federal environmental assessment in the past?

ONLY TO BE ASKED OF RESPONDENTS WHO HAVE PREVIOUS EXPERIENCE IN PARTICIPATING IN ENVIRONMENTAL ASSESSMENTS

Can you tell me a little about how the public hearing process for the Emera Brunswick Pipeline compared to those in which you have participated in the past?
PROBE IF BETTER/WORSE ON A RANGE OF ASPECTS

SECTION II – Pre-Hearing Communication

Do you remember how you first heard about the environmental assessment being carried out for the Emera Brunswick Pipeline? PROMPT:

- Newspaper
- Brochure delivered to home or office
- Radio
- Meetings

What were your impressions of the effort made by the National Energy Board to inform residents of Saint John and the pipeline corridor about the environmental assessment process and the public hearing?

What is your perspective on the efforts made to ensure people potentially affected by the pipeline knew that they would have a chance to air their views and concerns?

Could anything else have been done to make sure people knew about the public hearing?

Did you attend any of the public information sessions or pre-hearing planning sessions? PROMPT WITH LIST OF SESSIONS IF NECESSARY:

- ❑ April 5, 2006 Public Information Session, Saint John
- ❑ June 5, 2006, Public Information Session, Oromocto
- ❑ June 19 and 20 Public Information Sessions, Saint John
(designed to assist individuals with selecting a method pf participation in the process and preparing for effective and meaningful participation)
- ❑ October 12, 2006 Pre-hearing Planning Session, Saint John
(designed to assist registered participants with preparation for the public hearing)
- ❑ Don't know (Skip to **applying to participate** section.)

Did you get the information that you needed from the sessions?

Did you have an opportunity to ask questions?

Did you have the opportunity to speak to National Energy Board personnel at some point before, during or after the meeting? Were

they able to assist you? Do you have any suggestions for improvement?

Let's talk specifically about your experience in applying to participate **in the National Energy Board public hearing on the Emera Brunswick Pipeline.**
INTERVIEWER NOTE: IN ORDER TO BE CONSIDERED FOR INTERVENOR STATUS ITRVENORS HAD TO SUBMIT AN APPLICATION BY TUESDAY, JULY 4. LETTERS OF COMMENT AND LETTERS REQUESTING PERMISSION OT MAKE AN ORAL STATEMENT TO THE BOARD WERE DUE BY SEPTEMBER 12, 2006.

Do you feel you had enough time to prepare your application to participate?

IF NOT. How much time do you think you should have had to prepare your application?

How easily were you able to access the information and documentation you needed to apply to participate, such as registration forms and deadline information?

Were you able to contact NEB staff with questions if you had any? Did they respond in a timely manner? How were they helpful?

Do you have any suggestions as to how to make the application process more efficient or easier?

Was your decision to participate in any way affected by the requirements of the registration process? IF YES: Which particular requirements most encouraged/discouraged you?

How easy or complex did you find the application process? Did you feel intimidated by the process in any way?

Were you aware that there was funding available for participants to prepare submissions to the hearing? Did you apply for funding? If yes, can you describe your experience with this process?

ONLY TO BE ASKED OF RESPONDENTS WHO HAVE PREVIOUS EXPERIENCE IN PARTICIPATING IN ENVIRONMENTAL ASSESSMENTS

Compared to previous public hearings for environmental assessments in which you have participated, how would you compare the substituted process for the Emera Brunswick Pipeline in regards to:

- **The effectiveness of the public awareness campaign about the hearings and notification that the hearings were going to take place: do you personally remember any of the public notifications?**
- **the registration process;**
- **pre-hearing meetings; and**
- **the Participant Funding Program (if relevant).**

Section III – Participation

Preparing the submission

As an intervenor, did you make any submissions to the NEB panel during the review process?

What was your experience in terms of preparing your actual submission(s) for the public hearing?

Did you have enough time? Did you feel you had the expertise necessary to prepare a submission?

Was relevant documentation easily accessible? PROBE ON:

- **Draft scoping document;**
- **List of issues**
- **NEB paper titled 'What can I expect at the hearing?'**
- **NEB's project registry and documents filed as evidence**

What about questions and concerns that came up as you were preparing your submission? PROBE ON:

- **Were NEB personnel available to you?**
- **Were they helpful?**
- **Did they get back to you in time for you to incorporate their responses into your submission?**
- **Did you submit an information request?**
- **Was that process timely?**

Making a submission

Now, let's talk briefly about your actual submission(s).

Did you specifically comment on the Draft Scoping Document or the List of Issues?

Can you tell me a little bit about the specific things that you addressed in your submission?

Did you feel that your submission did a good job of presenting your key concerns to the review board? What could have helped you to make your submission more effective?

Did you feel adequately prepared to participate in the manner required by the public hearing process? PROBE ON: Were you cross-examined or questioned on your submission?

Did you feel comfortable while you were actually participating in the hearing? Did you have everything you needed with you [DOCUMENTATION, IDENTIFICATION] in order to participate?

As an intervenor did you feel you had sufficient time to review evidence submitted by other parties? Did you cross-examine or question any of the evidence submitted by other parties? What was your experience with the cross-examination?

Did NEB staff adequately inform you about what to expect at the hearing, and what to bring to the hearing? What else could they have done?

Did you feel the need for legal representation? Why/why not?

During the hearings the Board made several decisions with regard to the procedure of the hearings. Did these decisions affect your participation in any way? If yes, how? PROBE ON: Did you make any requests for changes to the proceedings? How were these requests responded to?

Let's talk about specifics such as the schedule for the actual public hearing.

Did you think that the hearing schedule allowed participants to easily participate? PROBE ON:

- **Were the dates and times [MORNING, AFTERNOON, EVENING] flexible enough to allow participants to work around job, family, and other commitments?**
- **Could you easily make the actual session?**
- **Were there enough days set aside for the hearing?**

- **What about things such as parking, finding the meeting room, and determining where to sit and what to do?**

Do you have any suggestions as to how to make the public hearing work better in terms of timing and logistics?

Did you review and/or comment on the following key documents?
- **EA Report by the NEB**
- **NEB's "Reasons for Decision" document**

ONLY TO BE ASKED OF RESPONDENTS WHO HAVE PREVIOUS EXPERIENCE IN PARTICIPATING IN ENVIRONMENTAL ASSESSMENTS

Compared to previous public hearings for environmental assessments in which you have participated, how would you compare the substituted process for the Emera Brunswick Pipeline in regards to:
- **preparing your submission for the public hearing;**
- **availability of NEB staff to answer questions and address concerns;**
- **your comfort level with the public hearing itself; and**
- **logistics relating to the process such as the amount of days allocated and the timing of the sessions.**

SECTION IV – Validity of Process

Understanding decision-making

Did you understand how the decisions of the National Energy Board were going to be made prior to participating in the process?

Do you understand how decisions are made under the Canadian Environmental Act? Did you feel that the public hearing gave you an opportunity to influence decisions regarding the Emera Brunswick Pipeline Project?

Validity of process

Considering your actual experience in participating in this public hearing, did you feel the process allowed the public and stakeholders such as community groups, commercial landowners and aboriginal groups to have their views considered in a meaningful way?

Do you believe that your submission had the potential to contribute to the decision made by the NEB?

Do you think your submission made a difference in regards to the environmental assessment of this pipeline project?

Do you feel that your submission was adequately responded to by the NEB? PROBE ON:

- **Did you have all your concerns addressed – either during the hearings or within the Report?**
- **Did the response you received to your submission satisfy you?**
- **Was it received in a reasonable amount of time?**
- **What else would you have liked to have seen covered in the response?**

ONLY TO BE ASKED OF RESPONDENTS WHO HAVE PREVIOUS EXPERIENCE IN PARTICIPATING IN ENVIRONMENTAL ASSESSMENTS

Compared to previous public hearings for environmental assessments in which you have participated, how would you

compare the substituted process for the Emera Brunswick Pipeline in regards to:

- **the potential for the hearing to influence the final environmental assessment;**
- **your own assessment as to whether your submission was considered in a meaningful way; and**
- **NEB's response to your submission in terms of content and timeliness?**

SECTION V – Conclusion

One of the main objectives of the public hearing for the Emera Brunswick Pipeline project was that it would provide a "timely and meaningful public participation".

What does "timely and meaningful public participation" mean to you in this context?

Do you think this public hearing achieved that? Why or why not?

What were your expectations in terms of participating in the process of evaluating the Emera Brunswick Pipeline?

Did the process, in the end, meet your expectations?

- **Did you feel it was worthwhile participating in the process?**
- **Would you do it again?**

What would you say is the most important advice to give someone who had never participated in this type of public hearing before?

ONLY TO BE ASKED OF RESPONDENTS WHO HAVE PREVIOUS EXPERIENCE IN PARTICIPATING IN ENVIRONMENTAL ASSESSMENTS

Compared to previous public hearings for environmental assessments in which you have participated, and considering everything we have talked about today, how would you best describe the differences between the substituted process used for the Emera Project, and other processes in which you have participated?

Do you have any final comments about anything that we've talked about today before we finish the survey?

On behalf of the Canadian Environmental Assessment Agency and Ipsos-Reid, I would like to thank your for your participation in this study.

Environnement Canada

Évaluation du processus de substitution de l'évaluation environnementale

Entrevues individuelles

Février/Mars 2008

Bonjour, puis-je parler à [INSÉRER LE NOM DE LA PERSONNE]?

[UNE FOIS LA PERSONNE DÉSIGNÉE EN LIGNE, LIRE CE QUI SUIT. SI PAS DISPONIBLE, DEMANDER À QUEL MOMENT ON PEUT RAPPELER ET LAISSER VOS NOM ET NUMÉRO DE TÉLÉPHONE].

Bonjour, ici _____ d'Ipsos-Reid. Comme vous le savez peut-être, l'Agence canadienne d'évaluation environnementale (ACEE) a mandaté Ipsos-Reid pour mener une série d'entrevues auprès des participants au processus de substitution de l'évaluation environnementale du projet de gazoduc d'Emera Brunswick Pipeline qui a eu lieu en 2006.

Ces entrevues ont pour but de discuter de votre expérience et de vos perceptions à l'égard du processus de substitution de l'évaluation environnementale. Il s'agissait de la toute première application du processus de substitution par une commission d'examen en vertu de la *Loi canadienne sur l'évaluation environnementale*. L'Agence canadienne d'évaluation environnementale a commandé cette étude pour déterminer la satisfaction globale des participants à l'égard du processus de substitution, de même que pour

recueillir tous les commentaires ou toutes les considérations des participants en vue de continuer à façonner la pratique de l'évaluation environnementale au Canada.

L'entrevue durera une trentaine de minutes. Toutes vos réponses seront tenues entièrement confidentielles et ne feront l'objet d'un rapport qu'après avoir été compilées avec celles des autres participants. Avez-vous le temps de répondre à nos questions maintenant ou préférez-vous le faire à un autre moment d'ici le 3 mars prochain?

[SI « OUI », COMMENCER L'ENTREVUE OU FIXER UN RENDEZ-VOUS. SI « NON », REMERCIER ET CONCLURE OU FIXER UN RAPPEL.]

COMMENCER L'ENTREVUE – Nous vous remercions beaucoup d'avoir accepté de participer à cette étude. Allons-y.

Section I – Mise en train, niveau de participation et impressions générales

Veuillez me parler brièvement de votre participation au processus d'évaluation environnementale du projet de gazoduc d'Emera Brunswick Pipeline.

Avez-vous participé à titre d'intervenant/dans le cadre d'une présentation orale/ou par l'envoi d'une lettre de commentaires? [CONFIRMER SELON LE PROFIL]

Était-ce en votre nom personnel ou représentiez-vous une organisation [INCITER POUR GROUPE COMMUNAUTAIRE, SECTEUR DE L'INDUSTRIE, AUTRE]? Si vous représentiez un groupe, à quel titre l'avez-vous représenté? [ÉTABLIR SI LE RÉPONDANT ÉTAIT UN MEMBRE DE L'ORGANISATION, UN CONSEILLER JURIDIQUE OU UN REPRÉSENTANT À UN AUTRE TITRE.]

Quelles sont les principales choses dont vous vous souvenez de votre participation? [AU BESOIN, DONNER PLUS DE RENSEIGNEMENTS AU SUJET DU PROCESSUS.]

Pourquoi avez-vous participé? [SONDER POUR LES RAISONS DE LA PARTICIPATION, P. EX. SUJET QUI LE CONCERNAIT DE MANIÈRE PROFESSIONNELLE OU PERSONNELLE.]

Je vais maintenant vous demander d'évaluer vos impressions générales du processus d'audience publique pour le projet de gazoduc d'Emera Brunswick Pipeline. Dans quelle mesure êtes-vous satisfait de votre expérience du processus? RAPPELER AU RÉPONDANT QU'IL N'ÉVALUE PAS LE RÉSULTAT DU PROCESSUS.

- ❑ Très satisfait
- ❑ Plutôt satisfait
- ❑ Pas très satisfait
- ❑ Pas du tout satisfait

Pourquoi dites-vous cela?

Vous a-t-on informé que ce processus d'évaluation environnementale du projet de gazoduc d'Emera Brunswick Pipeline était un processus « de substitution », ce qui signifie que l'évaluation était menée par une autorité fédérale différente de celle qui se charge habituellement de l'évaluation?

Étiez-vous au courant que c'était la première fois qu'une évaluation environnementale fédérale était menée par un organisme fédéral autre qu'une commission d'examen nommée par l'ACEE?

Croyez-vous que cette substitution a eu un impact quelconque sur votre participation? De quelle manière?

Avez-vous personnellement déjà participé à une évaluation environnementale fédérale dans le passé?

DEMANDER SEULEMENT AUX RÉPONDANTS QUI ONT DÉJÀ PARTICIPÉ À DES ÉVALUATIONS ENVIRONNEMENTALES.

Pouvez-vous me dire brièvement de quelle manière le processus d'audience publique pour le projet de gazoduc d'Emera Brunswick Pipeline se compare aux processus auxquels vous avez participé dans le passé?

SONDER SI MEILLEUR/PIRE PAR RAPPORT À DIFFÉRENTS ASPECTS.

SECTION II – Communication préalable à l'audience

Vous rappelez-vous comment vous avez entendu parler pour la première fois de l'évaluation environnementale menée pour le projet de gazoduc d'Emera Brunswick Pipeline? INCITER :

- Journaux
- Dépliant livré à la maison ou au bureau
- Radio
- Réunions

Qu'avez-vous pensé des efforts déployés par l'Office national de l'énergie pour renseigner les résidents de Saint-John et ceux qui vivent aux abords du couloir de gazoduc sur le processus d'évaluation environnementale et l'audience publique?

Quel est votre point de vue sur les efforts déployés pour s'assurer que les gens possiblement concernés par le projet de gazoduc sachent qu'ils avaient la chance de faire connaître leur opinion et leurs préoccupations?

Y a-t-il autre chose qu'on aurait pu faire pour s'assurer que les gens soient au courant de l'audience publique?

Avez-vous assisté à des séances d'information publique ou de planification préalable à l'audience? INCITER EN MENTIONNANT LA LISTE DES SÉANCES AU BESOIN :

- ❑ 5 avril 2006, séance d'information publique, Saint John
- ❑ 5 juin 2006, séance d'information publique, Oromocto

❑ 19 et 20 juin, séances d'information publique, Saint John *(visait à aider les gens à choisir une méthode de participation au processus et à se préparer pour assurer une participation efficace et significative)*

❑ 12 octobre 2006, séance de planification préalable à l'audience, Saint John *(visait à aider les participants inscrits à se préparer à l'audience publique)*

❑ Ne sait pas (Passer à la section **Demande de participation**.*)*

Lors de ces séances d'information, avez-vous obtenu les renseignements dont vous aviez besoin?

Avez-vous eu l'occasion de poser des questions?

Avez-vous eu l'occasion de parler au personnel de l'Office national de l'énergie avant, pendant ou après la rencontre? Le personnel a-t-il été en mesure de vous aider? Avez-vous des suggestions d'amélioration?

Nous allons maintenant parler plus précisément de votre expérience relative à votre demande de participation à l'audience publique de l'Office national de l'énergie sur le projet de gazoduc d'Emera Brunswick Pipeline.
NOTE À L'INTERVIEWER : POUR OBTENIR LE STATUT D'INTERVENANT, LA PERSONNE DOIT AVOIR SOUMIS SA DEMANDE AU PLUS TARD LE MARDI 4 JUILLET. LES LETTRES DE COMMENTAIRES ET DE DEMANDE D'AUTORISATION POUR FAIRE UNE PRÉSENTATION ORALE DEVAIENT ÊTRE PRÉSENTÉES À L'OFFICE AU PLUS TARD LE 12 SEPTEMBRE 2006.

Estimez-vous que vous avez eu suffisamment de temps pour préparer votre demande de participation?

SI NON. À votre avis, de combien de temps estimez-vous que vous auriez dû disposer pour préparer votre demande?

Dans quelle mesure avez-vous pu accéder facilement aux renseignements et à la documentation dont vous aviez besoin pour présenter une demande de participation, comme les formulaires d'inscription et les renseignements sur les dates limites?

Avez-vous été en mesure de communiquer avec le personnel de l'ONE pour lui poser vos questions, le cas échéant? A-t-on répondu à

vos questions dans un délai raisonnable? Dans quelle mesure le personnel vous a-t-il été utile?

Avez-vous des suggestions pour rendre le processus de demande plus simple ou efficace?

Les exigences du processus de demande ont-elles influencé d'une manière quelconque votre décision de participer? SI OUI : Quelles sont les exigences précises qui vous ont le plus encouragé/découragé à participer?

Dans quelle mesure avez-vous trouvé le processus de demande simple ou complexe? Vous êtes-vous senti intimidé de quelque manière que ce soit par le processus?

Saviez-vous que des fonds étaient offerts aux participants pour les aider à préparer leur demande pour l'audience? Avez-vous fait une demande de financement? Si oui, pouvez-vous décrire votre expérience concernant ce processus?

DEMANDER SEULEMENT AUX RÉPONDANTS QUI ONT DÉJÀ PARTICIPÉ À DES ÉVALUATIONS ENVIRONNEMENTALES.

Par rapport aux autres audiences publiques d'évaluation environnementale auxquelles vous avez participé, comment compareriez-vous le processus de substitution pour le projet de gazoduc d'Emera Brunswick Pipeline en ce qui concerne :

- **L'efficacité de la campagne de sensibilisation auprès du public au sujet des audiences et des avis publics sur la tenue des audiences : vous souvenez-vous personnellement de l'un ou l'autre des avis publics?**
- **le processus d'inscription;**
- **les rencontres préparatoires à l'audience; et**
- **le programme de financement destiné aux participants (le cas échéant).**

Section III – Participation

Préparation de la demande

En tant qu'intervenant, avez-vous fait des demandes au comité d'audience de l'ONE pendant le processus d'examen?

Quelle a été votre expérience concernant la préparation de votre demande ou de vos demandes pour l'audience publique?

Avez-vous eu suffisamment de temps? Estimiez-vous avoir l'expertise nécessaire pour préparer une demande?

Avez-vous pu accéder facilement à la documentation pertinente? SONDER :

- **Document d'orientation d'avant-projet**
- **Liste des questions**
- **Document de l'ONE appelé « What can I expect at the hearing? » (À quoi dois-je m'attendre durant l'audience?)**
- **Registres et documents relatifs au projet de l'ONE déposés comme éléments de preuve**

Et qu'en est-il des questions ou des préoccupations qui vous sont venus à l'esprit pendant la préparation de votre demande? SONDER :

- **Le personnel de l'ONE était-il à votre disposition?**
- **A-t-il été efficace?**
- **Le personnel vous a-t-il répondu à temps pour que vous puissiez incorporer les réponses à votre demande?**
- **Avez-vous présenté une demande de renseignements?**
- **Le processus s'est-il déroulé dans un délai raisonnable?**

Présentation d'une demande

Nous allons maintenant parler brièvement de votre(vos) demande(s) en tant que telle(s).

Avez-vous fait des commentaires sur le document d'orientation d'avant-projet ou la liste de questions en particulier?
Pouvez-vous me parler brièvement des points précis que vous avez soulevés dans votre demande?

Avez-vous eu l'impression que votre demande a permis de transmettre efficacement vos principales préoccupations à la commission d'examen? Qu'est-ce qui aurait pu vous aider à rendre votre demande plus efficace?

Vous êtes-vous senti suffisamment préparé pour participer pleinement au processus d'audience publique? SONDER : Avez-vous été contre-interrogé ou questionné au sujet de votre demande?

Vous sentiez-vous à l'aise lorsque vous avez pris part à l'audience? Aviez-vous tout ce dont vous aviez besoin [DOCUMENTATION, IDENTIFICATION] pour participer?

À titre d'intervenant, avez-vous eu l'impression d'avoir suffisamment de temps pour vérifier les éléments de preuve déposés par les autres parties? Avez-vous contre-interrogé ou questionné les autres parties concernant l'un ou l'autre des éléments de preuve déposés? Quelle a été votre expérience concernant le contre-interrogatoire?

Le personnel de l'ONE vous a-t-il renseigné adéquatement au sujet de ce à quoi vous deviez vous attendre à l'audience et de ce que vous deviez apporter? Qu'aurait-il pu faire d'autre?

Avez-vous ressenti le besoin de recourir à un représentant juridique? Pourquoi/Pourquoi non?

Pendant les audiences, l'Office a rendu plusieurs décisions concernant la procédure d'audience. Ces décisions ont-elles eu un effet quelconque sur votre participation? Si oui, de quelle manière? SONDER : Avez-vous demandé qu'on change quoi que ce soit à la procédure? Comment a-t-on répondu à vos demandes?

Parlons maintenant de certains points précis comme le calendrier des audiences publiques.

D'après vous, est-ce que le calendrier des audiences a permis aux participants de participer facilement? SONDER :

- **Est-ce que les dates et les heures [MATIN, APRÈS-MIDI, SOIRÉE] offraient suffisamment de souplesse pour permettre aux participants de jongler avec leurs engagements professionnels, familiaux et autres?**
- **Avez-vous pu facilement assister à la séance?**
- **Y a-t-il eu suffisamment de jours prévus pour l'audience?**

- **Qu'en est-il des aspects comme se stationner, trouver la salle de rencontre et savoir où vous asseoir et quoi faire?**

Avez-vous des suggestions pour accroître l'efficacité de l'audience publique en ce qui concerne le moment choisi et la logistique?

Avez-vous passé en revue les principaux documents suivants ou émis des commentaires à leur sujet?
- **Rapport d'évaluation environnementale de l'ONE**
- **Document « Motifs de décision » de l'ONE**

DEMANDER SEULEMENT AUX RÉPONDANTS QUI ONT DÉJÀ PARTICIPÉ À DES ÉVALUATIONS ENVIRONNEMENTALES.

Par rapport aux autres audiences publiques d'évaluation environnementale auxquelles vous avez participé, comment compareriez-vous le processus de substitution pour le projet de gazoduc d'Emera Brunswick Pipeline en ce qui concerne :
- **la préparation de votre demande pour l'audience publique;**
- **la disponibilité du personnel de l'ONE pour répondre à vos questions et à vos préoccupations;**
- **votre niveau de confort à l'audience publique en tant que tel; et**
- **la logistique liée au processus comme le nombre de jours alloués et la date et l'heure des séances.**

SECTION IV – Validité du processus

Compréhension de la prise de décision

Avant de participer au processus, compreniez-vous comment les décisions de l'Office national de l'énergie allaient être rendues?

Comprenez-vous comment les décisions sont rendues en vertu de la *Loi canadienne sur l'environnement*? Avez-vous eu l'impression que l'audience publique vous a permis d'influencer les décisions concernant le projet de gazoduc d'Emera Brunswick Pipeline?

Validité du processus

À la lumière de votre expérience de participation à cette audience publique, avez-vous eu l'impression que le processus a permis au public et aux parties prenantes comme les groupes communautaires,

les propriétaires de terrains à usage commercial et les groupes autochtones, de faire entendre leurs points de vue de manière significative?

Croyez-vous que votre demande avait le potentiel d'influencer la décision rendue par l'ONE?

Croyez-vous que votre demande a fait une différence dans l'évaluation environnementale de ce projet de gazoduc?

Croyez-vous que l'ONE a répondu adéquatement à votre demande?
SONDER :

- **A-t-on répondu à toutes vos préoccupations – soit durant les audiences ou dans le rapport?**
- **A-t-on répondu à votre demande de façon satisfaisante?**
- **Vous a-t-on répondu dans un délai raisonnable?**
- **À quoi d'autre auriez-vous aimé qu'on s'attarde dans la réponse?**

DEMANDER SEULEMENT AUX RÉPONDANTS QUI ONT DÉJÀ PARTICIPÉ À DES ÉVALUATIONS ENVIRONNEMENTALES.

Par rapport aux autres audiences publiques d'évaluation environnementale auxquelles vous avez participé, comment compareriez-vous le processus de substitution pour le projet de gazoduc d'Emera Brunswick Pipeline en ce qui concerne :

- **la possibilité que l'audience influence l'évaluation environnementale finale;**
- **votre propre évaluation à savoir si on a tenu compte de votre demande de manière significative; et**
- **la réponse de l'ONE à votre demande pour ce qui est du contenu et du délai de réponse.**

SECTION V – Conclusion

L'un des principaux objectifs de l'audience publique pour le projet de gazoduc d'Emera Brunswick Pipeline était d'assurer une « participation du public significative et en temps opportun ».

Que signifie pour vous la phrase « participation du public significative et en temps opportun » dans ce contexte?

Croyez-vous que cette audience publique a atteint cet objectif? Pourquoi ou pourquoi non?

Quelles étaient vos attentes en participant au processus d'évaluation du projet de gazoduc d'Emera Brunswick Pipeline?

En bout de ligne, est-ce que le processus a répondu à vos attentes?

- **Avez-vous eu l'impression que votre participation au processus a valu la peine?**
- **Le feriez-vous à nouveau?**

Quel serait le meilleur conseil que vous pourriez donner à une personne qui n'a jamais participé à ce genre d'audience publique?

DEMANDER SEULEMENT AUX RÉPONDANTS QUI ONT DÉJÀ PARTICIPÉ À DES ÉVALUATIONS ENVIRONNEMENTALES.

Par rapport aux autres audiences publiques d'évaluation environnementale auxquelles vous avez participé, et en tenant compte de tout ce dont nous avons discuté aujourd'hui, comment décririez-vous le mieux les différences entre le processus de substitution utilisé pour le projet de gazoduc d'Emera et les autres processus auxquels vous avez participé?

Pour terminer, avez-vous des commentaires à ajouter sur ce dont nous avons parlé aujourd'hui?

Au nom de l'Agence canadienne d'évaluation environnementale et d'Ipsos-Reid, je vous remercie d'avoir accepté de participer à cette étude.

Appendix 2: Emera Brunswick Pipeline Panel Substitution - Timeline of Events

Process Map Event	Date	Days from Receipt of Project Description	Days from Previous Step
Initial meeting between Maritimes & Northeast Pipeline, federal authorities and province to discuss anticipated pipeline EA.	25-May-05	-226	0
NEB 101 Session in Dartmouth for government departments.	12-Oct-05	-86	140
NEB 101 Session in Moncton for government department.	14-Oct-05	-84	2
Project description, preliminary information package, or application received by NEB.	6-Jan-06	0	84
Notify FAs under *Federal Coordination Regulations* (section 5 letter).	12-Jan-06	6	6
DFO Federal Coordination Response.	16-Jan-06	10	4
EC Federal Coordination Response.	27-Jan-06	21	11
TC Federal Coordination Response.	31-Jan-06	25	4
NRCan Federal Coordination Response.	1-Feb-06	26	1
CTA Federal Coordination Response.	7-Feb-06	32	6
NEB staff meet with Government of New Brunswick DOE regarding EA process - introduce idea of substitution.	8-Feb-06	33	1
NEB staff meet with federal departments - introduce idea of substitution.	9-Feb-06	34	1
NEB determines project triggers comprehensive study.	16-Feb-06	41	7
Draft scoping document distributed to departments for comment.	17-Feb-06	42	1
Scoping document & Registry of comments opened/posted.	23-Feb-06	48	6
HC Federal Coordination Response.	28-Feb-06	53	5
Draft scope agreed to by federal departments.	1-Mar-06	54	1

Appendix 2: Emera Brunswick Pipeline Panel Substitution - Timeline of Events

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EC Federal Coordination Response.	27-Jan-06	21	11
TC Federal Coordination Response.	31-Jan-06	25	4
NRCan Federal Coordination Response.	1-Feb-06	26	1
CTA Federal Coordination Response.	7-Feb-06	32	6
NEB staff meet with Government of New Brunswick DOE regarding EA process - introduce idea of substitution.	8-Feb-06	33	1
NEB staff meet with federal departments - introduce idea of substitution.	9-Feb-06	34	1
NEB determines project triggers comprehensive study.	16-Feb-06	41	7
Draft scoping document distributed to departments for comment.	17-Feb-06	42	1
Establishment of CEAA (Notice of Commence [illegible] posted)	23-Feb-06	48	6
HC Federal Coordination Response.	28-Feb-06	53	5
Draft scope agreed to by federal departments.	1-Mar-06	54	1

Process Map Event	Date	Days from Receipt of Project Description	Days from Previous Step
Referral letter to the Minister of the Environment recommending a substituted review panel (CEA Act section 25 referral letter includes the draft scope, confirmation of support from RAs & province, and confirmation of participant funding from the Agency)	16-Mar-06	69	15
Review of referral letter	21-Mar-06	74	5
Commitment from the NEB to the Agency regarding process requirements/condition	27-Mar-06	80	6
NEB information session held in Saint John.	5-Apr-06	89	9
DFO submits additional considerations and comments on the EA Scoping Document.	19-Apr-06	103	14
Minister's decision on EA referral and substitution.	3-May-06	117	28
Draft scoping document made available for public consultation (RAs and province consulted if scope changes significantly as a result of public comment or project updates).	5-May-06	119	2
[illegible]	23-May-06	137	18
Complete section 52 application filed by Emera Brunswick PipilinC.	23-May-06	137	0
Provincial EIA application filed.	23-May-06	137	0
NEB information session held at the Union of New Brunswick Indians (UNBI).	5-Jun-06	150	13
Consultation period on draft scoping document closes.	7-Jun-06	152	2
NEB hearing order issued, including list of issues. Includes deadline (typically approximately 2 weeks) for registering as an intervenor or indicating intent to provide written or oral comments (is this typically 2 weeks as well?)	9-Jun-06	154	2
NEB information sessions held in Saint John.	19-Jun-06	164	10
NEB information sessions held in Saint John.	20-Jun-06	165	1
Deadline to apply for the Agency's PFP.	21-Jun-06	166	1
Final scoping document issued.	23-Jun-06	168	2
Deadline for government participant registration.	4-Jul-06	179	11

Process Map Event	Date	Days from Receipt of Project Description	Days from Previous Step
Letter sent to the Minister of the Environment recommending a substituted review panel (CEA Act section 25 referral). Letter includes the draft scope, confirmation of support from RAs & province, and confirmation of participant funding from the Agency.	16-Mar-06	69	15
The Agency response letter to NEB's request for referral and substitution.	21-Mar-06	74	5
Commitment from the NEB to the Agency regarding process requirements/conditions.	27-Mar-06	80	6
NEB information session held in Saint John.	5-Apr-06	89	9
DFO submits additional considerations and comments on the EA Scoping Document.	19-Apr-06	103	14
Minister's decision on EA referral and substitution.	3-May-06	117	28
Draft scoping document made available for public consultation (RAs and province consulted if scope changes significantly as a result of public comment or project updates).	5-May-06	119	2
The Agency Participant Funding Program (PFP) announced with 30-day application period.	23-May-06	137	18
Complete section 52 application filed by Emera Brunswick PipilinC.	23-May-06	137	0
Provincial EIA application filed.	23-May-06	137	0
NEB information session held at the Union of New Brunswick Indians (UNBI).	5-Jun-06	150	13
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NEB hearing order issued, including list of issues. Includes deadline (typically approximately 2 weeks) for registering as an intervenor or indicating intent to provide written or oral comments (is this typically 2 weeks as well?).	9-Jun-06	154	2
NEB information sessions held in Saint John.	19-Jun-06	164	10
NEB information sessions held in Saint John.	20-Jun-06	165	1
Deadline to apply for the Agency's PFP.	21-Jun-06	166	1
Final scoping document issued.	23-Jun-06	168	2
Deadline for government participant registration.	4-Jul-06	179	11

Process Map Event	Date	Days from Receipt of Project Description	Days from Previous Step
Deadline for intervenor status applications.	4-Jul-06	179	0
Deadline to file requests to amend the list of issues.	4-Jul-06	179	0
[illegible]	10-Jul-06	185	6
[illegible]	18-Jul-06	193	8
Deadline for intervenors and government participant information requests to EBPC	15-Aug-06	221	28
[illegible]	17-Aug-06	223	2
Deadline for requests to make oral statements and to submit letters of comment.	12-Sep-06	249	26
Deadline for government and intervenors to file written evidence (originally September 12: A-12, A-18).	20-Sep-06	257	8
Deadline for information requests on evidence of intervenors and government participants (originally September 25: A-12, A-18).	29-Sep-06	266	9
Pre-hearing planning session.	12-Oct-06	279	13
Deadline to indicate intent to cross-examine government proponents.	13-Oct-06	280	1
Union of New Brunswick Indians withdraws as an intervenor.	26-Oct-06	293	13
[illegible]	27-Oct-06	294	1
Public hearing process, including further information requests and oral hearing begins.	6-Nov-06	304	10
Public hearings end.	20-Nov-06	318	14
EBPC deadline to file final arguments.	1-Dec-06	329	11
Intervenor deadline to file final arguments.	15-Dec-06	343	14
EBPC deadline to reply to intervenor's final arguments / close of written arguments.	22-Dec-06	350	7
[illegible]	11-Apr-07	460	110
Government response receives GIC approval.	17-May-07	496	36
RA decisions on the EA.	17-May-07	496	0
[illegible]	24-May-07	503	7
[illegible]	29-May-07	508	5

Process Map Event	Date	Days from Receipt of Project Description	Days from Previous Step
Deadline for intervenor status applications.	4-Jul-06	179	0
Deadline to file requests to amend the list of issues.	4-Jul-06	179	0
List of parties released.	10-Jul-06	185	6
Participant Funding Program announce successful applicants (news release).	18-Jul-06	193	8
Deadline for intervenors and government participant information requests to EBPC	15-Aug-06	221	28
Participant Funding Program announces additional funding awarded to UNBI.	17-Aug-06	223	2
Deadline for requests to make oral statements and to submit letters of comment.	12-Sep-06	249	26
Deadline for government and intervenors to file written evidence (originally September 12: A-12, A-18).	20-Sep-06	257	8
Deadline for information requests on evidence of intervenors and government participants (originally September 25: A-12, A-18).	29-Sep-06	266	9
Pre-hearing planning session.	12-Oct-06	279	13
Deadline to indicate intent to cross-examine government proponents.	13-Oct-06	280	1
Union of New Brunswick Indians withdraws as an intervenor.	26-Oct-06	293	13
NEB releases "What to expect at the Hearing" document.	27-Oct-06	294	1
Public hearing process, including further information requests and oral hearing begins.	6-Nov-06	304	10
Public hearings end.	20-Nov-06	318	14
EBPC deadline to file final arguments.	1-Dec-06	329	11
Intervenor deadline to file final arguments.	15-Dec-06	343	14
EBPC deadline to reply to intervenor's final arguments / close of written arguments.	22-Dec-06	350	7
Panel report submitted to the Minister of the Environment (public release).	11-Apr-07	460	110
Government response receives GIC approval.	17-May-07	496	36
RA decisions on the EA.	17-May-07	496	0
GIC EA decision published.	24-May-07	503	7
Provincial EA certificate issued.	29-May-07	508	5

Process Map Event	Date	Days from Receipt of Project Description	Days from Previous Step
RAs post decision on the EA R	31-May-07	510	2
[illegible]	31-May-07	510	0
GIC approval of NEB decision	7-Jun-07	517	7

Legend of Colours
Federal Responsible Authorities (RAs) and Federal Authorities (FAs)
Proponent
[illegible]
Participant
Deadline
Public Consultation
Minister/Cabinet/Governor in Council

Process Map Event	Date	Days from Receipt of Project Description	Days from Previous Step
RAs post decision on the CEAR.	31-May-07	510	2
NEB releases "Reasons for Decision".	31-May-07	510	0
GIC approval of NEB decision.	7-Jun-07	517	7

Legend of Colours
Federal Responsible Authorities (RAs) and Federal Authorities (FAs).
Government of New Brunswick
Proponent
National Energy Board
Canadian Environmental Assessment Agency
Participant
Deadline
Public Consultation
Minister/Cabinet/Governor in Council

APPENDIX 3: Concordance Table Cross-referencing Between the Factors to be Considered and Specific Report Sections for Condition #1 of the Substitution Agreement

The substituted process for the Emera Brunswick Pipeline Project was required to apply fully the scope of assessment, factors to be considered and scope of factors as set out in the Environmental Assessment Scoping Document, which accompanied the letter from Minister of the Environment regarding the referral of the project to a review panel and a substituted process.

The scope of assessment, the factors to be considered, and scope of factors were itemized and compared to the final Environmental Assessment Report released by the National Energy Board. The results of this analysis are presented in the tables below.

SCOPE OF ASSESSMENT

Scope of Project

EA Scoping Document	Presence in the EA Report
Construction, operation, maintenance and foreseeable changes, and where relevant, the abandonment, decommissioning, and rehabilitation of sites relating to the entire project, and specifically, the following physical works and activities.	Treatment of "abandonment" for all aspects of the project is as follows: "Any environmental effects associated with the abandonment phase are likely to be similar to those caused by the construction phase. Pursuant to the NEB Act, an application would be required to abandon the facility, at which time the environmental effects would be assessed by the NEB and other relevant agencies." It is uncertain whether or not the analysis of abandonment in fact is applying fully the scope of assessment.
A pipeline of approximately 145 kilometres from the Canaport™ LNG Facility at Mispec Point.	This is considered throughout the EA report.
Six above-ground valve sites, three in urban Saint John and three in rural areas, within fenced areas (20X20m), access roads, and power and telecommunications supply	Considered throughout, particularly with regard to mitigation measures and limiting use of herbicides within the valve site areas
Combined meter station and launcher site immediately outside of the Canaport™ LNG facility battery limits, with associated access road, and power and telecommunications supply.	Metering and launcher/receiver stations were included generally for mitigation measures such as the monitoring the effects of herbicide use on vascular plants and species at risk, and also with concern for fugitive emissions.
A combined valve and	

launcher/receiver station site adjacent to LV 63 on the existing Saint John Lateral (off of the West Branch Road, Musquash), with associated access road, and power and telecommunications supply.	
Related physical works and activities, including all temporary facilities, such as temporary work areas, marshalling yards, storage areas and access roads, required for the construction of the pipeline.	Included in the scope of the project. These components were identified for various mitigation measures, such as the location of marshalling yards.

Factors to be Considered

The environmental assessment will include a consideration of the following factors listed in paragraphs 16(1)(*a*) to (*d*) and subsection 16(2) of the CEA Act.

EA Scoping Document	Presence in EA Report
The environmental effects of the project, including the environmental effects of malfunctions or accidents that may occur in connection with the project and any cumulative environmental effects that are likely to result from the project in combination with other projects or activities that have been or will be carried out.	These issues are addressed throughout the EA report, and are mainly addressed in Sections 7.2 and 7.3.
The significance of the effects	Table 6.1 sets out the criteria used to determine the significance of effects. At the end of each effect analysis section the significance of the effects is presented (i.e. 7.2.4.1).
Comments from the public that are received during the public review.	Comments were included throughout the report in subject-appropriate sections. Often the views were contained in the "Background" section of the issues tables found in Section 7.2, or the "Views of the Parties" section.
Measures that are technically and economically feasible and would mitigate any significant adverse environmental effects of the project.	These occurred throughout the document, particularly in the issues tables found in Section 7.2.
The purpose of the project	Section 3.2

Alternative means of carrying out the project that are technically and economically feasible and the environmental effects of any such alternative means	Section 3.3
The need for and the requirements of any follow-up program with respect to the project.	Section 7.5
The capacity of renewable resources that is likely to be significantly affected by the project to meet the needs of the present and those of the future.	Section 7.4.2
Consideration of alternative means includes addressing an alternative marine route for the pipeline south of Saint John that may necessitate a disposal at sea permit.	Sections 3.3.2 to 3.3.4
A priority on impact avoidance and minimization opportunities that recognizes "…mitigation is used to address all adverse environmental effects, whether or not subsequent analysis determines that the effects are significant" (CEA Agency RA Guide, 1994, p. 88).	Throughout the EA report
A consideration of available community knowledge and Aboriginal traditional knowledge as applicable.	Section 4.2 indicated that traditional ecological knowledge (TEK) from previous studies would be incorporated. Aboriginal persons with knowledge and experience related to the traditional use of the project area will be required to monitor construction in green field areas. In Section 9.2 Recommendation D required the proponent to follow-up on recommendations made in a TEK study from 2006.
The need for the project	Section 3.2
Alternatives to the project	Section 3.2

Scope of Factors to be Considered

The environmental assessment will consider the potential effects of the proposed project within spatial and temporal boundaries which encompass the periods and areas during and within which the project may potentially interact with, and have an effect on components of the environment. These boundaries will vary with the issues and factors considered, and will include:

EA Scoping Document	Presence in the EA Report
Construction, operation, decommissioning, rehabilitation, and abandonment of the site or other undertakings that are proposed by the proponent or that are likely to be carried out in relation to the physical works proposed by the proponent, including mitigation and habitat replacement measures.	These factors were considered throughout the EA report, with the exception of abandonment.
The natural variation of a population or ecological component.	Natural variation was used as a determinant of the significance of effects, specifically for water resources and fish habitat and resources.
The timing of sensitive life cycle phases of wildlife species in relation to the scheduling of the project.	Critical Atlantic salmon spawning and rearing habitat were addressed in the mitigation measures through the identification and flagging of the area, and avoidance of habitat in a watercourse, in consultation with Fisheries and Oceans Canada (p.67). Additionally, there were several points throughout the hearings where the issue of timing was discussed, most notably regarding spawning, and deer wintering areas within Rockwood Park, although this was not included in the final report.
The time required for an effect to become evident.	This consideration was included in many of the monitoring aspects throughout the Environmental Assessment Report. For instance, with respect to acid rock drainage (ARD): Post-construction monitoring in areas where bedrock with ARD potential were exposed within 250 m of a watercourse within a designated Watershed Protection Area, quarterly monitoring for ARD indicator parameters would be done for two years for general chemistry in order to identify any changes in stream water quality that might be indicative of acidic drainage.
	This factor was included as criteria to determine the

The time required for a population or ecological component to recover from an effect and return to a pre-effect condition, including the estimated degree of recovery.	significance of environmental effects, as well as in the determination of the capacity of renewable resources that are likely to be affected by the project to meet the needs of present and future generations.
The area affected by the project.	The geographic extent of the project's effects was considered throughout the EA report.
The area within which a population or ecological component functions and within which a project effect may be felt	This was considered throughout the EA report for various environmental components.